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<p style="text-align: right;">Page 1</p> <p>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----X</p> <p>CYNTHIA S. GILLETTE, individually and derivatively on behalf of Nominal Defendant BLIMPIE OF CALIFORNIA, INC.,</p> <p style="text-align: center;">Plaintiff, vs. index# 07 Civ 4697 (CLB)</p> <p>JEFFREY ENDERVELT, BELLE ENDERVELT and DORA RICCI,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">and</p> <p>BLIMPIE OF CALIFORNIA, INC.,</p> <p style="text-align: center;">Nominal Defendant.</p> <p>-----X</p> <p style="text-align: center;">DEPOSITION OF JEFFREY ENDERVELT White Plains, New York Thursday, November 8, 2007 10:50 a.m.</p>	<p style="text-align: right;">Page 2</p> <p>1 November 8, 2007</p> <p>2 White Plains, New York</p> <p>3</p> <p>4</p> <p>5 Deposition of JEFFREY ENDERVELT,</p> <p>6 held at the U.S. Courthouse, 300 Quarropas</p> <p>7 Street, White Plains, New York, taken by the</p> <p>8 Plaintiff, pursuant to Order, before</p> <p>9 Jane D. Watson, a Notary Public of the State of</p> <p>10 New York.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S:</p> <p>2 Attorney for Plaintiff</p> <p>3</p> <p>4 KEVIN FRITZ, ESQ.</p> <p>5 STORCH AMINI MUNVES, PC</p> <p>6 2 Grand Central Tower</p> <p>7 140 East 45th Street, 25th Floor</p> <p>8 New York, New York 10017</p> <p>9 Phone: (212) 490-4100</p> <p>10 Fax: (212) 490-4208</p> <p>11 kfritz@saml egal . com</p> <p>12</p> <p>13 Attorneys for Defendants</p> <p>14</p> <p>15 STEVEN T. SLEDZIK, ESQ.</p> <p>16 JONES GARNEAU, LLP</p> <p>17 60 East 42nd Street, Suite 3210</p> <p>18 New York, New York 10165</p> <p>19 Phone: (212) 759-2500</p> <p>20 ssl edzi k@j onesgarneau. com</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23 CYNTHIA GILLETTE</p> <p>24 DORA RICCI</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED, that all</p> <p>3 objections, except as to the form of the</p> <p>4 question, shall be reserved to the time of the</p> <p>5 trial .</p> <p>6 IT IS FURTHER STIPULATED AND AGREED that the</p> <p>7 within deposition may be sworn to and signed</p> <p>8 before any officer authorized to administer an</p> <p>9 oath, with the same force and effect as if signed</p> <p>10 and sworn to before the Court.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 MR. FRITZ: The parties have</p> <p>2 stipulated that the deposition of</p> <p>3 Mr. Endervelt will continue --</p> <p>4 MR. SLEDZIK: May continue.</p> <p>5 MR. FRITZ: -- if necessary after the</p> <p>6 Defendants produce the documents that are</p> <p>7 still owed to the Plaintiff.</p> <p>8</p> <p>9 J E F F R E Y E N D E R V E L T, called as a</p> <p>10 Witness, having been duly sworn by a Notary</p> <p>11 Public, was examined and testified as follows:</p> <p>12</p> <p>13 EXAMINATION BY</p> <p>14 MR. FRITZ:</p> <p>15</p> <p>16 Q. Good morning, Mr. Endervelt. Thank</p> <p>17 you for being with us this morning.</p> <p>18 Have you ever been deposed before?</p> <p>19 A. I have.</p> <p>20 Q. How many times?</p> <p>21 A. I don't recall. At least five to ten.</p> <p>22 Q. Were you a party to those actions?</p> <p>23 A. No, not to most of them. Not in the</p> <p>24 sense of personally, no.</p> <p>25 Q. What were the nature of those</p>	<p>1 litigations?</p> <p>2 A. Most of them were business-related</p> <p>3 franchise cases. There may have been some that I</p> <p>4 was personally involved in, but I don't recall at</p> <p>5 this point.</p> <p>6 Q. Can you identify the parties?</p> <p>7 A. No.</p> <p>8 Q. You don't recall them?</p> <p>9 A. No.</p> <p>10 Q. Any of them?</p> <p>11 A. What period of time are we talking</p> <p>12 about?</p> <p>13 Q. Any period of time.</p> <p>14 A. Any period of time?</p> <p>15 Q. Yes.</p> <p>16 A. I was involved in a lawsuit with Jacob</p> <p>17 Michael in 1975 against the company we bought</p> <p>18 from him. The ones in the '80s, I don't recall.</p> <p>19 There was a -- there were several franchise</p> <p>20 lawsuits. I don't recall them at this point.</p> <p>21 Coca Cola -- there was a lawsuit with Blimpie</p> <p>22 International, but I don't think it had to do</p> <p>23 with me personally. There were probably others,</p> <p>24 but I don't recall.</p> <p>25 Q. How many would you estimate you've</p>
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<p>1 been involved in?</p> <p>2 A. As an individual?</p> <p>3 Q. Or as a corporate representative?</p> <p>4 A. As a corporate representative, I've</p> <p>5 probably been involved in 10 to 20 of them.</p> <p>6 Q. Were you involved in a litigation</p> <p>7 involving Suzuki?</p> <p>8 A. Oh, yes -- well, I don't think I was</p> <p>9 involved, that I recall.</p> <p>10 Q. Or an entity that you were --</p> <p>11 A. Not that I recall. I was involved</p> <p>12 individually.</p> <p>13 Q. Or an entity that you had worked for</p> <p>14 or were an owner of?</p> <p>15 A. Yes.</p> <p>16 Q. What year was that Suzuki litigation?</p> <p>17 A. What year was it commenced?</p> <p>18 Q. Correct.</p> <p>19 A. I believe it was commenced in 2002.</p> <p>20 Q. And you were deposed in that</p> <p>21 litigation?</p> <p>22 A. You know, I don't recall.</p> <p>23 Q. Do you know if anyone was deposed in</p> <p>24 that litigation?</p> <p>25 A. Yes. Ms. Gillette was deposed in that</p>	<p>1 litigation. I'm sorry, I don't remember.</p> <p>2 Q. Did you ever speak with Ms. Gillette</p> <p>3 about her testimony in that litigation?</p> <p>4 A. I'm sure I did.</p> <p>5 Q. Did you ever review any affidavits</p> <p>6 that she was going to sign?</p> <p>7 A. I don't recall.</p> <p>8 Q. Did you ever tell her to sign an</p> <p>9 affidavit that contained untruthful statements?</p> <p>10 A. Never.</p> <p>11 Q. Are you sure about that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What was the nature of the Suzuki</p> <p>14 litigation?</p> <p>15 A. To the best of my recollection, Suzuki</p> <p>16 sued Blimpie International on a contract for</p> <p>17 breach of contract, I believe, and I don't</p> <p>18 remember if it was an oral or written contract,</p> <p>19 having to do with sponsoring Suzuki cars, and I</p> <p>20 think Nascar, if I'm correct.</p> <p>21 Q. And so why were you involved in that</p> <p>22 litigation? Were you a principal of Blimpie</p> <p>23 International at that time?</p> <p>24 A. When the lawsuit was brought, I was a</p> <p>25 stockholder, yes. I was also the CEO of the</p>

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<p>1 company.</p> <p>2 Q. What about the other litigations that</p> <p>3 you mentioned, what were the nature of those?</p> <p>4 You said you were involved in other litigation</p> <p>5 while you were a principal or owner of other</p> <p>6 entities?</p> <p>7 A. Many of them were franchise claims</p> <p>8 against either Blimpie of California or Blimpie</p> <p>9 International, I guess, where a franchisee</p> <p>10 claimed that the company had breached or someone</p> <p>11 in the company had breached some representation</p> <p>12 to it, typical franchisee lawsuits.</p> <p>13 Q. Did they claim that you breached --</p> <p>14 A. Not that I recall. In any of them, I</p> <p>15 don't recall that, but I don't recall sitting</p> <p>16 here today.</p> <p>17 Q. Who did they say made the</p> <p>18 misrepresentations?</p> <p>19 A. In one case, Ms. Gillette. In other</p> <p>20 cases, a salesman who worked for the company.</p> <p>21 Q. What was the name of the case in which</p> <p>22 someone claimed that Ms. Gillette made a</p> <p>23 misrepresentation?</p> <p>24 A. Anto, Inc., A-N-T-O.</p> <p>25 Q. Where was that action filed?</p>	<p>1 A. I don't recall if it was an</p> <p>2 arbitration in California or a case in court.</p> <p>3 Q. Case in court in California?</p> <p>4 A. Yes.</p> <p>5 Q. Who was the Defendant, Blimpie of</p> <p>6 California?</p> <p>7 A. Yes.</p> <p>8 Q. Did you do anything to prepare for</p> <p>9 today's deposition?</p> <p>10 A. No.</p> <p>11 Q. And that includes reviewing any</p> <p>12 documents?</p> <p>13 A. That's correct.</p> <p>14 Q. Can you summarize your educational</p> <p>15 history for me?</p> <p>16 A. I went to high school, college and law</p> <p>17 school.</p> <p>18 Q. Where did you go to college?</p> <p>19 A. Brooklyn college.</p> <p>20 Q. Did you have a major or concentration?</p> <p>21 A. Political science and economics.</p> <p>22 Q. What year did you receive that degree?</p> <p>23 A. I didn't. I went on to law school at</p> <p>24 the end of three years.</p> <p>25 Q. And you didn't graduate from college?</p>
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<p>1 A. Nope.</p> <p>2 Q. What law school did you attend?</p> <p>3 A. Baltimore, University of Baltimore.</p> <p>4 Q. Did the University of Baltimore know</p> <p>5 that you didn't graduate from college?</p> <p>6 A. Of course. You don't have to graduate</p> <p>7 from college to go to law school.</p> <p>8 Q. What year did you graduate from the</p> <p>9 University of Baltimore?</p> <p>10 A. Sixty-six, I think.</p> <p>11 Q. When you were either at Brooklyn</p> <p>12 College or the University of Baltimore, did you</p> <p>13 take any classes concerning corporations or</p> <p>14 duties of officers in corporation?</p> <p>15 A. No -- in law school?</p> <p>16 Q. Either one?</p> <p>17 A. Law school, I took corporate law, yes.</p> <p>18 Q. What about classwork outside of those</p> <p>19 institutions?</p> <p>20 MR. SLEDZIK: Object to the form.</p> <p>21 Q. Regarding management of corporations?</p> <p>22 A. Not to my recollection, no. I may</p> <p>23 have taken over the years some kind of course,</p> <p>24 but I don't recall.</p> <p>25 Q. Are you admitted to practice in any</p>	<p>1 states?</p> <p>2 A. Yes.</p> <p>3 Q. What states?</p> <p>4 A. California and New York.</p> <p>5 Q. Those are still current?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And after you graduated University of</p> <p>8 Baltimore in 1966, what did you do in terms of</p> <p>9 employment, if any?</p> <p>10 A. Initially, I went to work for a firm</p> <p>11 called Feder & Garten (phonetic) in Baltimore.</p> <p>12 Then -- you want it all?</p> <p>13 Q. Well, I'm going to ask you the</p> <p>14 positions, duties and tenure at each one.</p> <p>15 A. I was a teacher for a year in the</p> <p>16 public system in Baltimore. After that, I came</p> <p>17 up and went to work for my uncle in his law firm,</p> <p>18 Alex Slough (phonetic), just a one-man firm.</p> <p>19 After that, I was a legislative counsel to</p> <p>20 congressman John Murphy of Staten Island. After</p> <p>21 that, I was counsel to the minority leader of the</p> <p>22 New York State legislature Stanley Steingut. And</p> <p>23 I served for six months as an aide to former</p> <p>24 Justice Arthur Goldberg. After that, I practiced</p> <p>25 for a while independently with some friends of</p>

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<p>1 mine. After that, I became counsel to a company</p> <p>2 called Michael Industries at that time. I then</p> <p>3 became president of Michael Industries. That</p> <p>4 company or its derivatives is where I was until</p> <p>5 the late '80s. After that, I served -- I also</p> <p>6 served in the interim as chairman of the board,</p> <p>7 president and CEO of Lehigh Valley Industries, a</p> <p>8 New York Stock Exchange company. At the same</p> <p>9 time, I was president of Michael Industries. And</p> <p>10 also, after that, I became president of Blimpie</p> <p>11 of California. Eventually, in 2002, I became CEO</p> <p>12 of Blimpie International.</p> <p>13 And then, currently, I'm president of</p> <p>14 Blimpie of California and X2Y1.</p> <p>15 Q. What is the relationship, if any,</p> <p>16 between Z2Y1 and Blimpie of California?</p> <p>17 A. Affiliated only by the fact I own</p> <p>18 stock in both companies -- or I own stock in one</p> <p>19 company. I'm CEO of both companies.</p> <p>20 Q. Which company do you own stock in?</p> <p>21 A. X2Y1.</p> <p>22 Q. Who are the other stockholders?</p> <p>23 MR. SLEDZIK: Objection.</p> <p>24 A. David Frommer, Ms. Gillette, Jeffrey</p> <p>25 Langfelter. There are people with options and</p>	<p>1 warrants. Do you want them?</p> <p>2 Q. Not at this time.</p> <p>3 What percent do you own of X2Y1?</p> <p>4 A. 56 to 60 percent, something like that.</p> <p>5 Q. You are the controlling shareholder?</p> <p>6 A. Yes, sir.</p> <p>7 Q. What percent of X2Y1 does Ms. Gillette</p> <p>8 own?</p> <p>9 A. I think it's around 4.6 percent.</p> <p>10 Q. Going back to some of your legal</p> <p>11 employment, can you explain what type of matters</p> <p>12 you worked on and what your duties were?</p> <p>13 A. Each one was different. Which one did</p> <p>14 you want to talk about?</p> <p>15 Q. Let's start with the earliest one.</p> <p>16 A. Feder & Garten was very short.</p> <p>17 Basically, I was the low guy on the totem pole.</p> <p>18 Whatever they gave me to do, and I don't</p> <p>19 remember -- I tried one criminal case. I think</p> <p>20 the guy is getting out soon -- did briefs and</p> <p>21 stuff. I don't remember what they were.</p> <p>22 Then I went to -- my uncle, it was</p> <p>23 real estate. He was a real estate lawyer. And</p> <p>24 it was mostly real estate.</p> <p>25 With the congressman and with the</p>
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<p>1 assemblyman, it wasn't legal work in the sense</p> <p>2 that you're talking about. It was legislative</p> <p>3 work; bill drafting, bills that I worked on,</p> <p>4 speech writing.</p> <p>5 Q. In any of those positions, did you</p> <p>6 ever deal with issues involving fiduciary duties</p> <p>7 of directors or officers of corporations?</p> <p>8 A. No, not in terms of -- did I handle a</p> <p>9 case on the matter, no.</p> <p>10 Q. At any point in your career have you</p> <p>11 dealt with those issues?</p> <p>12 A. Have I dealt with the issues?</p> <p>13 MR. SLEDZIK: Object to the form.</p> <p>14 A. Can you be more specific?</p> <p>15 Q. Have you had to take classes? Have</p> <p>16 any actions against you besides the current one</p> <p>17 involved allegations of breaches of fiduciary</p> <p>18 duty?</p> <p>19 MR. SLEDZIK: Object to the form.</p> <p>20 A. I don't know if there was ever a case</p> <p>21 against me for breach of fiduciary duty. I don't</p> <p>22 recall. Have I ever specifically taken a class</p> <p>23 on it? I would gather that when I took my PLI</p> <p>24 seminars, there probably was a course on</p> <p>25 corporate law within the context of that class</p>	<p>1 that was probably something on fiduciary</p> <p>2 responsibilities in corporations. But I don't</p> <p>3 believe I've ever as a lawyer had a case that I</p> <p>4 recall.</p> <p>5 Q. You mentioned X2Y1. What is the</p> <p>6 nature of that entity's business?</p> <p>7 A. It's the owner of Maui Tacos</p> <p>8 International, a Mexican quick casual restaurant</p> <p>9 chain; Smoothie Island, as its name indicated, a</p> <p>10 smoothie chain; and we also own the trademarks to</p> <p>11 Pasta Central, which we're just beginning to</p> <p>12 develop.</p> <p>13 Q. Do you know the value of that company?</p> <p>14 A. No, I don't.</p> <p>15 MR. SLEDZIK: Object to the form.</p> <p>16 Q. Does it pay dividends to its</p> <p>17 shareholders?</p> <p>18 A. No, it doesn't.</p> <p>19 Q. Do you receive any income from X2Y1?</p> <p>20 A. Right now, no, I don't think so.</p> <p>21 Q. At any point have you?</p> <p>22 A. Yes -- from X2Y1 itself, I don't</p> <p>23 recall, but when we owned Blimpie International</p> <p>24 as an active company, yes.</p> <p>25 Q. Would you have records showing whether</p>

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<p>1 you ever received any compensation from X2Y1?</p> <p>2 A. What period of time?</p> <p>3 Q. Any period of time during which you</p> <p>4 were an owner or an officer or director?</p> <p>5 A. Yes.</p> <p>6 Q. What years would those records be</p> <p>7 from?</p> <p>8 A. X2Y1 was formed in 2001. It didn't</p> <p>9 become an active company until January of 2002</p> <p>10 when it purchased Blimpie International. So it</p> <p>11 would have to be from January 23, 2002 forward.</p> <p>12 Q. But there's no relationship besides</p> <p>13 the common ownership between X2Y1 and Blimpie of</p> <p>14 California?</p> <p>15 MR. SLEDZIK: Objection.</p> <p>16 A. You'll have to explain what you mean</p> <p>17 by the term "relationship."</p> <p>18 Q. Is one owned by the other?</p> <p>19 A. No. You're talking legal? No.</p> <p>20 Q. So there's no legal connection?</p> <p>21 MR. SLEDZIK: Objection.</p> <p>22 A. That's correct.</p> <p>23 Q. Has Ms. Gillette ever received any</p> <p>24 income from X2Y1?</p> <p>25 MR. SLEDZIK: Objection.</p>	<p>1 A. No.</p> <p>2 Q. Do you know when Blimpie of California</p> <p>3 was formed?</p> <p>4 A. 1984, I believe.</p> <p>5 Q. Did you incorporate it?</p> <p>6 A. I did. Well, was I the person legally</p> <p>7 on the certificate of incorporation, no.</p> <p>8 Q. When you say, yes, you did, do you</p> <p>9 mean that you initiated its existence --</p> <p>10 A. That's correct.</p> <p>11 Q. -- in some manner?</p> <p>12 Can you explain for the record the</p> <p>13 nature of Blimpie of California's business?</p> <p>14 A. Blimpie of California is the holder of</p> <p>15 a license to franchise Blimpie restaurants in</p> <p>16 most of California from -- at that time, ask the</p> <p>17 restaurant group, which was Blimpie</p> <p>18 International, by a name change.</p> <p>19 Q. Who are the original owners of Blimpie</p> <p>20 of California?</p> <p>21 A. I don't recall.</p> <p>22 Q. Were you one of them?</p> <p>23 A. No.</p> <p>24 Q. Did you purchase it from someone?</p> <p>25 A. No --</p>
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<p>1 MR. SLEDZIK: Objection.</p> <p>2 Q. At any point, did you become an owner</p> <p>3 of Blimpie of California?</p> <p>4 A. I don't think I've ever owned stock</p> <p>5 directly in Blimpie of California.</p> <p>6 Q. When you say "directly"?</p> <p>7 A. Or indirectly, I mean.</p> <p>8 Q. Do you know if the ownership has</p> <p>9 changed from 1985 to the present?</p> <p>10 A. Yes.</p> <p>11 Q. Can you explain that?</p> <p>12 A. Ms. Gillette was given an option to</p> <p>13 purchase 15 percent of the stock, which she</p> <p>14 exercised in early 1998, I believe.</p> <p>15 Q. Who owned the other 85 percent?</p> <p>16 A. Belle Endervelt.</p> <p>17 Q. Who is Belle Endervelt?</p> <p>18 A. My mother.</p> <p>19 Q. Did Ms. Gillette pay any money for the</p> <p>20 shares that were issued to her?</p> <p>21 A. I believe so.</p> <p>22 Q. Do you know how much?</p> <p>23 A. When you say she paid, we gave her the</p> <p>24 money to pay for the shares. It was \$11,000, I</p> <p>25 believe.</p>	<p>1 Q. When you say "we gave her the money,"</p> <p>2 who are you referring to?</p> <p>3 A. I believe it was the company who gave</p> <p>4 her the money.</p> <p>5 Q. And what about Belle Endervelt's</p> <p>6 shares, how much did she pay?</p> <p>7 A. She was the founding -- one of the</p> <p>8 corporations that we owned, the family was the</p> <p>9 founding corporation. She didn't pay anything</p> <p>10 other than put the capital up, initially.</p> <p>11 Q. Do you know how much the capital was?</p> <p>12 A. No.</p> <p>13 Q. Can you estimate?</p> <p>14 A. No.</p> <p>15 Q. Was it more than \$500,000?</p> <p>16 A. I can't estimate. I don't know.</p> <p>17 Q. And you've never been an owner of</p> <p>18 Blimpie of California?</p> <p>19 MR. SLEDZIK: Objection.</p> <p>20 A. Not to my recollection.</p> <p>21 Q. Do you know how many shares have been</p> <p>22 issued and are outstanding of Blimpie of</p> <p>23 California?</p> <p>24 A. No.</p> <p>25 Q. Are Ms. Gillette and Belle Endervelt</p>

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<p>1 the only two owners today?</p> <p>2 A. Yes.</p> <p>3 Q. When did you first meet Spencer</p> <p>4 Gillette?</p> <p>5 A. To the best of my recollection, 1990.</p> <p>6 Q. Let me step back for a second. Are</p> <p>7 you familiar with something called the uniform</p> <p>8 franchise offering circular?</p> <p>9 A. Yes.</p> <p>10 Q. What is that?</p> <p>11 A. It's a document that is required to be</p> <p>12 filed by the federal government and the states.</p> <p>13 If you're -- if you want to register to sell</p> <p>14 franchises or offer for sale franchises in any</p> <p>15 jurisdiction, each jurisdiction has different</p> <p>16 requirements.</p> <p>17 Q. How often -- do you have to file it</p> <p>18 more than once annually?</p> <p>19 A. You have to file it annually and then</p> <p>20 you have to file any material change.</p> <p>21 Q. Has Blimpie of California ever filed</p> <p>22 any such document?</p> <p>23 A. Every year.</p> <p>24 Q. Does Blimpie of California maintain</p> <p>25 copies of those?</p>	<p>1 A. I don't know how far back. They do</p> <p>2 maintain copies, but sitting here, I don't know</p> <p>3 how far back.</p> <p>4 MR. FRITZ: We request those</p> <p>5 documents.</p> <p>6 MR. SLEDZIK: I'll tell you, as I</p> <p>7 would anyone, put your request in writing,</p> <p>8 the request for production, and we'll</p> <p>9 respond to it in writing.</p> <p>10 Q. I believe you stated that you first</p> <p>11 met Spencer Gillette in 1990. Do you recall</p> <p>12 where that was?</p> <p>13 A. 9465 Wilshire Boulevard in Beverly</p> <p>14 Hills, California.</p> <p>15 Q. Do you remember the occasion by which</p> <p>16 or for which you met Ms. Gillette?</p> <p>17 A. At that time, I think I had just moved</p> <p>18 to California and was opening up an office there</p> <p>19 and I rented space in an executive suite where</p> <p>20 there were different companies working there.</p> <p>21 They offered space, and Ms. Gillette had a</p> <p>22 company that did secretarial services. And</p> <p>23 Mr. Gitlan (phonetic), I believe, was the</p> <p>24 gentleman's name who ran the facility, and he</p> <p>25 introduced me to her.</p>
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<p>1 Q. What was your impression of</p> <p>2 Ms. Gillette?</p> <p>3 A. She was a nice young lady.</p> <p>4 Q. At any time, did Ms. Gillette work for</p> <p>5 the same entity as you?</p> <p>6 A. At any time? Yes.</p> <p>7 Q. When was the first time?</p> <p>8 A. Somewhere in the range of '90 to '92,</p> <p>9 somewhere in that period. I don't remember</p> <p>10 exactly.</p> <p>11 Q. For which entity?</p> <p>12 A. Blimpie of California.</p> <p>13 Q. In which office? Was it in California</p> <p>14 or some other --</p> <p>15 A. No, it was in California. I don't</p> <p>16 remember if it was at 9465 or we had moved over</p> <p>17 to the other office.</p> <p>18 Q. Did she have a title?</p> <p>19 A. Initially, I don't believe so.</p> <p>20 Q. What were her initial duties?</p> <p>21 A. Her initial duties were to assist me</p> <p>22 in the operation of the business, including</p> <p>23 training of franchisees, doing reports. We were</p> <p>24 required to do reports on each store. We have to</p> <p>25 visit the stores, help the franchisees, assist</p>	<p>1 the franchisees, those kind of endeavors.</p> <p>2 Q. Whose decision was it to hire her?</p> <p>3 A. Mine.</p> <p>4 Q. You based that decision on what?</p> <p>5 A. Having been associated with her in her</p> <p>6 capacity; having spoken to her; having talked to</p> <p>7 her about her background, including her time at</p> <p>8 Marriott, she seemed to have a good understanding</p> <p>9 of the food business.</p> <p>10 Q. I believe you said that was sometime</p> <p>11 around 1992 --</p> <p>12 A. In the range of '90 to '92. I don't</p> <p>13 remember exactly.</p> <p>14 Q. Would you have any documents that</p> <p>15 would show when she first started working for</p> <p>16 Blimpie of California?</p> <p>17 A. I don't know.</p> <p>18 Q. At some point, she later became an</p> <p>19 owner of Blimpie of California?</p> <p>20 A. Yes.</p> <p>21 Q. Would you have documents showing</p> <p>22 exactly when?</p> <p>23 A. I believe so, yes.</p> <p>24 Q. Would you have documents showing the</p> <p>25 amount of ownership that she was provided or</p>

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<p>1 bought?</p> <p>2 A. I believe I do. I didn't have time to</p> <p>3 review stuff because I didn't think I was being</p> <p>4 deposed until tomorrow. So I don't recall.</p> <p>5 Q. At some point, was Spencer promoted by</p> <p>6 Blimpie of California?</p> <p>7 A. Yes.</p> <p>8 Q. To what position?</p> <p>9 A. Vice president.</p> <p>10 Q. Who determined that she should be</p> <p>11 promoted?</p> <p>12 A. I did.</p> <p>13 Q. Why did you think that she deserved</p> <p>14 promotion?</p> <p>15 A. Because I thought she was capable at</p> <p>16 what she does or did.</p> <p>17 Q. Did her duties change when she became</p> <p>18 vice president?</p> <p>19 A. I don't believe -- we were a small</p> <p>20 company. I don't believe the duties changed.</p> <p>21 Q. Did her compensation change?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you have documents showing when she</p> <p>24 became vice president?</p> <p>25 A. I don't know.</p>	<p>1 Q. At some point, did her title change</p> <p>2 from vice president to something else?</p> <p>3 A. I heard her say in her deposition the</p> <p>4 other day, executive vice president. It very</p> <p>5 well may have. I don't recall. I'm not denying</p> <p>6 or admitting it. I don't recall.</p> <p>7 Q. If she was promoted to executive vice</p> <p>8 president, do you know whose decision at Blimpie</p> <p>9 of California that would have been?</p> <p>10 MR. SLEDZIK: Object to form.</p> <p>11 A. Mine.</p> <p>12 Q. And that would have been based on her</p> <p>13 performance?</p> <p>14 MR. SLEDZIK: Objection.</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall what her salary was as</p> <p>17 executive vice president, to the extent she did</p> <p>18 become executive vice president?</p> <p>19 MR. SLEDZIK: Object to form.</p> <p>20 A. No.</p> <p>21 Q. Would you have documents showing that?</p> <p>22 MR. SLEDZIK: Objection.</p> <p>23 A. At the time, I don't know. You're</p> <p>24 going back to -- obviously, you're going back in</p> <p>25 the '90s sometime. I don't know.</p>
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<p>1 Q. You don't know --</p> <p>2 A. I don't know sitting here today</p> <p>3 whether I have those documents.</p> <p>4 Q. When you say "I," you mean Blimpie of</p> <p>5 California?</p> <p>6 A. Yes.</p> <p>7 Q. Are you a director of Blimpie of</p> <p>8 California?</p> <p>9 A. Yes.</p> <p>10 Q. When did you become a director?</p> <p>11 A. Back in the '80s.</p> <p>12 Q. How did you become a director?</p> <p>13 Meaning, was there some type of board meeting?</p> <p>14 Did you appoint yourself --</p> <p>15 MR. SLEDZIK: Objection.</p> <p>16 A. I assume back then there was a</p> <p>17 stockholder meeting, and I was elected as</p> <p>18 director.</p> <p>19 Q. Are there minutes from that meeting?</p> <p>20 A. I don't know.</p> <p>21 Q. Does Blimpie of California maintain</p> <p>22 minutes from each board meeting that is held?</p> <p>23 A. It does.</p> <p>24 Q. What about each shareholders' meeting?</p> <p>25 A. It does.</p>	<p>1 Q. And it maintains those records in its</p> <p>2 offices?</p> <p>3 A. It does. I don't know how far back it</p> <p>4 goes. We, unfortunately, moved several times</p> <p>5 around the states, and I don't know that I have</p> <p>6 all the records.</p> <p>7 Q. Would they have been purposely</p> <p>8 discarded --</p> <p>9 A. No.</p> <p>10 MR. SLEDZIK: You have to let him</p> <p>11 finish, and give me time to object.</p> <p>12 BY MR. FRITZ:</p> <p>13 Q. Are you unsure whether you have them</p> <p>14 because there was some type of policy in place</p> <p>15 for discarding records of a certain age or they</p> <p>16 may have been lost in the move from one place to</p> <p>17 another --</p> <p>18 MR. SLEDZIK: Objection.</p> <p>19 Q. -- or another reason?</p> <p>20 A. It would be the latter. There was no</p> <p>21 policy in place.</p> <p>22 Q. Are you still a director?</p> <p>23 A. Yes, I am.</p> <p>24 Q. How many other directors are there</p> <p>25 now, if any?</p>

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<p>1 A. One.</p> <p>2 Q. Who is that?</p> <p>3 A. Dora Ricci.</p> <p>4 Q. When did she become a director?</p> <p>5 A. Within the last year roughly I would</p> <p>6 say.</p> <p>7 Q. How did that occur?</p> <p>8 A. There was a vacancy on the board, and</p> <p>9 I appointed her.</p> <p>10 Q. How did the vacancy come about?</p> <p>11 A. At some point, Ms. Gillette resigned,</p> <p>12 as I recall.</p> <p>13 Q. As a director?</p> <p>14 A. As a director.</p> <p>15 Q. Do you recall when that was?</p> <p>16 A. 2004, I believe.</p> <p>17 Q. When did she become a director? When</p> <p>18 did Spencer become a director of Blimpie of</p> <p>19 California?</p> <p>20 A. In the '90s.</p> <p>21 Q. Was that pursuant to a vote?</p> <p>22 A. I just don't recall, sitting here</p> <p>23 today.</p> <p>24 Q. If it was pursuant to a vote, would it</p> <p>25 have been a board vote or a shareholder vote?</p>	<p>1 A. It would have been a shareholder vote.</p> <p>2 Q. Shareholders would have been Belle and</p> <p>3 Ms. Gillette at the time?</p> <p>4 MR. SLEDZIK: Objection.</p> <p>5 A. No.</p> <p>6 Q. Who would the shareholders have been?</p> <p>7 A. Belle.</p> <p>8 Q. Do you know why Ms. Gillette resigned</p> <p>9 in 2004?</p> <p>10 MR. SLEDZIK: Objection.</p> <p>11 A. To the best of my recollection, I'm</p> <p>12 really not clear on it sitting here today. She</p> <p>13 had left the company, and I believe at the time</p> <p>14 that she left the company, the company, meaning</p> <p>15 Blimpie International and Blimpie of California,</p> <p>16 she resigned from all the companies.</p> <p>17 Q. Was she terminated or did she resign?</p> <p>18 A. She resigned.</p> <p>19 Q. From which positions?</p> <p>20 A. All of them, vice president I believe</p> <p>21 of Blimpie International and vice president or</p> <p>22 maybe executive vice president, I don't recall,</p> <p>23 of Blimpie of California.</p> <p>24 Q. You also are saying she resigned as</p> <p>25 director --</p>
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<p>1 A. To the best of my --</p> <p>2 MR. SLEDZIK: Wait. Let him finish.</p> <p>3 BY MR. FRITZ:</p> <p>4 Q. Are you also saying she resigned as a</p> <p>5 director of Blimpie of California?</p> <p>6 A. To the best of my recollection.</p> <p>7 Q. Would you have any documents showing</p> <p>8 that?</p> <p>9 A. Whether it was a resignation or not,</p> <p>10 yes. She might not have been reelected. One way</p> <p>11 or the other, it will show.</p> <p>12 Q. When you say she might not have been</p> <p>13 reelected, who would have participated in that</p> <p>14 vote?</p> <p>15 A. That vote, if there was a vote, the</p> <p>16 stockholder, Belle Endervelt.</p> <p>17 Q. So if Ms. Gillette resigned sometime</p> <p>18 in 2004, Belle Endervelt would have been the</p> <p>19 voting shareholder to vote her out, vote</p> <p>20 Ms. Gillette out?</p> <p>21 MR. SLEDZIK: Objection to the form.</p> <p>22 A. If she resigned, she resigned and</p> <p>23 there was no vote. If there was another -- if</p> <p>24 there was another election of directors, and she</p> <p>25 was not elected, those electing the stockholders</p>	<p>1 at that point would have been Ms. Gillette and</p> <p>2 Ms. Endervelt, and Ms. Endervelt owns 85 percent</p> <p>3 of the company.</p> <p>4 Q. But if there was a decision to remove</p> <p>5 Ms. Gillette as director in 2004, and that</p> <p>6 decision was by the shareholders, who would have</p> <p>7 been voting in that vote?</p> <p>8 MR. SLEDZIK: Object to the form.</p> <p>9 A. It would have been the shareholders,</p> <p>10 Mrs. Endervelt and Ms. Gillette.</p> <p>11 Q. And do you know if that vote ever took</p> <p>12 place?</p> <p>13 A. Sitting here today, I don't know.</p> <p>14 What you're trying to get at, did Ms. Gillette</p> <p>15 vote? She had resigned from the company, so I</p> <p>16 doubt she voted.</p> <p>17 Q. I'm not trying to get to that, but I</p> <p>18 appreciate your attempt to clarify that. I'm</p> <p>19 trying to determine which majority shareholder</p> <p>20 participated in that vote, and whether the vote</p> <p>21 ever took place, and whether it was a proper</p> <p>22 vote.</p> <p>23 A. The vote would have taken place by me</p> <p>24 as proxy for my mother, I believe.</p> <p>25 Q. Do you have records showing that you</p>

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<p>1 had served as proxy?</p> <p>2 A. I don't know that I have that record</p> <p>3 right now.</p> <p>4 Q. Do you know if Belle would have them?</p> <p>5 A. No -- unfortunately, no. She wouldn't</p> <p>6 know where it is.</p> <p>7 Q. Would the corporation have them?</p> <p>8 A. I don't know.</p> <p>9 Q. Has Belle ever attended any</p> <p>10 shareholders meetings?</p> <p>11 A. Ever? Yes.</p> <p>12 Q. When was that?</p> <p>13 A. Back in the '90s, probably.</p> <p>14 Q. At some point, that stopped?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know why?</p> <p>17 A. For a couple of reasons.</p> <p>18 MR. SLEDZIK: I object to the form.</p> <p>19 A. Lately, it stopped because,</p> <p>20 unfortunately, my mother is not in a position to</p> <p>21 do that. Prior to that, it probably stopped</p> <p>22 because it may have been we were in two different</p> <p>23 places.</p> <p>24 Q. So she wouldn't participate, but you</p> <p>25 would participate as a proxy?</p>	<p>1 A. That's correct.</p> <p>2 Q. And you are not sure if you have</p> <p>3 records showing that you served as her proxy?</p> <p>4 A. That's correct.</p> <p>5 Q. Have there been any other directors</p> <p>6 other than Ms. Ricci, yourself and Miss Gillette?</p> <p>7 A. Ever?</p> <p>8 Q. Yes.</p> <p>9 A. Yes.</p> <p>10 Q. Who are those other people?</p> <p>11 A. Back in the '80s, a fellow named Alan</p> <p>12 Moll, M-O-L-L, I believe; a guy named Bert Fried.</p> <p>13 Back then, there were several others. I don't</p> <p>14 recall their names at this point. May have been</p> <p>15 a guy named Alan Green, Paul Onorato (phonetic).</p> <p>16 I don't recall those names. I think at one point</p> <p>17 for a period of two years Jerry Weintraub.</p> <p>18 Q. Would you have records showing when</p> <p>19 each person became a director and either resigned</p> <p>20 or was terminated?</p> <p>21 MR. SLEDZIK: Object to the form.</p> <p>22 A. There would have been minutes.</p> <p>23 Whether we still have them or not, I don't know.</p> <p>24 Q. Who is the custodian of those records?</p> <p>25 A. Now, I am.</p>
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<p>1 Q. Has there been a previous one?</p> <p>2 A. At different times, yes.</p> <p>3 Q. Who was that?</p> <p>4 A. Well, at times, the book and records,</p> <p>5 after I left California, were in California. I</p> <p>6 guess Ava Sumpter had them at the time. I'm sure</p> <p>7 at some point -- we're a tiny, little company --</p> <p>8 Ms. Gillette had them at some point. This is a</p> <p>9 very small organization.</p> <p>10 Q. Are you an officer of Blimpie of</p> <p>11 California?</p> <p>12 A. I am.</p> <p>13 Q. What is your title?</p> <p>14 A. President.</p> <p>15 Q. How long have you been president?</p> <p>16 A. Since 1990, I believe, '89.</p> <p>17 Q. How did you become president?</p> <p>18 A. The board appointed me.</p> <p>19 Q. The board consisted of whom at that</p> <p>20 point?</p> <p>21 A. Me -- it may have just been me at that</p> <p>22 point.</p> <p>23 Q. Was Spencer ever an officer?</p> <p>24 A. Yes. We've been through that.</p> <p>25 Q. I believe I asked you what her salary</p>	<p>1 was and you were not sure?</p> <p>2 A. I don't know.</p> <p>3 Q. Do you know how it was paid? Was it</p> <p>4 paid via check or cash?</p> <p>5 A. No, I honestly don't know the form. I</p> <p>6 didn't do that.</p> <p>7 Q. Would you have records showing the</p> <p>8 amount of her salary?</p> <p>9 A. I believe it was all prior to 2002,</p> <p>10 going back. I have to check sir.</p> <p>11 Q. And the decision to make her vice</p> <p>12 president was your decision?</p> <p>13 A. Yes.</p> <p>14 Q. Can you give me a general overview of</p> <p>15 the performance of Blimpie of California while</p> <p>16 Ms. Gillette served as either vice president or</p> <p>17 executive vice president.</p> <p>18 MR. SLEDZIK: Can I have the question</p> <p>19 read back.</p> <p>20 (Record read.)</p> <p>21 A. We have been, unfortunately, a growth</p> <p>22 company for a lot of years -- a company in</p> <p>23 growing stages. Her performance was always fine</p> <p>24 except for one matter, which cost the company a</p> <p>25 substantial sum of money.</p>

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<p>1 Q. What matter was that?</p> <p>2 A. Anto.</p> <p>3 Q. How much did it cost the company?</p> <p>4 A. Probably close to \$200,000.</p> <p>5 Q. That was based on an arbitration, a</p> <p>6 legal action?</p> <p>7 A. Yes.</p> <p>8 Q. Why do you say that Spencer was the</p> <p>9 cause of that?</p> <p>10 A. She made material misrepresentations</p> <p>11 apparently to Mister -- the owner of Anto.</p> <p>12 Q. Do you know what those statements</p> <p>13 were?</p> <p>14 A. To the best of my recollection sitting</p> <p>15 here today, it had to do with what he would be</p> <p>16 entitled, the number of units he would be</p> <p>17 entitled to open in Home Depots that we were then</p> <p>18 testing Blimpie in.</p> <p>19 Q. Were these statements oral or written?</p> <p>20 A. Well, Ms. Gillette told us they were</p> <p>21 oral and that she never made them until about a</p> <p>22 week before the arbitration when the other side</p> <p>23 produced a written statement signed by her.</p> <p>24 Q. Do you have a copy of that statement?</p> <p>25 A. I don't, but I believe the attorneys</p>	<p>1 who handled the case still have it.</p> <p>2 Q. Who were those attorneys?</p> <p>3 A. At that time, it was Miller and Hogeem</p> <p>4 (phonetic). The firm has since disbanded. The</p> <p>5 attorneys were Stacy Zill (phonetic) and Perry</p> <p>6 Cameron were the trial attorneys.</p> <p>7 Q. Where are those attorneys located?</p> <p>8 A. Los Angeles, California.</p> <p>9 Q. All of them?</p> <p>10 A. All of them.</p> <p>11 Q. Did you review the statement before</p> <p>12 Ms. Gillette signed it?</p> <p>13 MR. SLEDZIK: Objection.</p> <p>14 A. No. I didn't even know about it.</p> <p>15 BY MR. FRITZ:</p> <p>16 Q. When was the first time you learned</p> <p>17 about it?</p> <p>18 A. A week before the trial.</p> <p>19 Q. You mentioned something about</p> <p>20 \$200,000. Was that a settlement or an</p> <p>21 arbitration award?</p> <p>22 A. We settled the case. Our attorneys --</p> <p>23 on the advice of our attorneys.</p> <p>24 Q. Besides from that matter, are there</p> <p>25 any other areas or any other situations in which</p>
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<p>1 you don't believe Ms. Gillette performed</p> <p>2 adequately?</p> <p>3 A. In Blimpie of California?</p> <p>4 Q. Correct.</p> <p>5 A. No.</p> <p>6 Q. Do you know if Ms. Spencer's departure</p> <p>7 from Blimpie of California, whether by</p> <p>8 resignation or termination, had anything to do</p> <p>9 with the litigation involving Blimpie</p> <p>10 International and Suzuki?</p> <p>11 MR. SLEDZIK: Object to the form.</p> <p>12 A. To the extent she was leaving Blimpie</p> <p>13 world, Blimpie International, yes, I think they</p> <p>14 were connected.</p> <p>15 Q. Why do you have that impression?</p> <p>16 A. It all took place at the same time</p> <p>17 and, we were severing our relationship with</p> <p>18 Spencer as an operating person within our</p> <p>19 companies.</p> <p>20 Q. Were you a part of that decision?</p> <p>21 A. Yes.</p> <p>22 Q. Why did you make that decision?</p> <p>23 A. The board strongly recommended it.</p> <p>24 Q. Who? Which board -- I'm sorry, the</p> <p>25 board of which company?</p>	<p>1 A. Blimpie International.</p> <p>2 Q. Who was on that board?</p> <p>3 A. Dan Dean, Chris Meininger, David</p> <p>4 Frommer, myself, Chris Sellon. There was another</p> <p>5 one or two people's names. I don't recall,</p> <p>6 sitting here right now.</p> <p>7 Q. So the board decided that she would be</p> <p>8 terminated --</p> <p>9 A. Correct.</p> <p>10 Q. -- if she didn't resign?</p> <p>11 A. Correct.</p> <p>12 Q. That was based on what, just what</p> <p>13 happened with the Anto litigation?</p> <p>14 A. No. It had nothing to do with the</p> <p>15 Anto litigation.</p> <p>16 MR. SLEDZIK: Object to form.</p> <p>17 BY MR. FRITZ:</p> <p>18 Q. What did it concern?</p> <p>19 A. The Suzuki matter and several other</p> <p>20 internal matters, where our head of human</p> <p>21 resources suggested that were issues with Miss</p> <p>22 Gillette and her relationship with some of the</p> <p>23 people in her areas.</p> <p>24 Q. Let's start with the Suzuki matter.</p> <p>25 What particularly about the Suzuki matter led to</p>

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<p>1 or was part of the decision to terminate, if that</p> <p>2 is what occurred, Ms. Gillette from the Blimpie</p> <p>3 entities?</p> <p>4 A. We found ourselves in a position again</p> <p>5 much like Anto and Blimpie of California where</p> <p>6 Ms. Gillette had made a material</p> <p>7 misrepresentation that cost the company</p> <p>8 significant money --</p> <p>9 Q. Did you believe at the time that that</p> <p>10 misrepresentation, if it did occur, was willful</p> <p>11 and intentional?</p> <p>12 A. When you say "willful," define that,</p> <p>13 please.</p> <p>14 MR. SLEDZIK: Object to the form.</p> <p>15 BY MR. FRITZ:</p> <p>16 Q. She knew she was making a false</p> <p>17 statement?</p> <p>18 A. Yes.</p> <p>19 MR. SLEDZIK: Object to the form.</p> <p>20 Q. How do you know that?</p> <p>21 MR. SLEDZIK: Objection to the form.</p> <p>22 A. Well, the events occurred prior to us</p> <p>23 ever owning Blimpie International, and she made</p> <p>24 representations about Blimpie International and</p> <p>25 she was neither an officer, director, employee or</p>	<p>1 stockholder or anything else, committing Blimpie</p> <p>2 International to certain contractual obligations.</p> <p>3 She had no authority, wasn't even involved with</p> <p>4 Blimpie International.</p> <p>5 Q. Did you give her that authority?</p> <p>6 A. Absolutely not, sir.</p> <p>7 MR. SLEDZIK: Object to the form.</p> <p>8 BY MR. FRITZ:</p> <p>9 Q. Did anyone from those entities give</p> <p>10 her the authority to make that representation you</p> <p>11 just classified?</p> <p>12 A. No, sir.</p> <p>13 Q. Did you agree with the board that</p> <p>14 Ms. Gillette should be terminated based on what</p> <p>15 had occurred with the Suzuki litigation?</p> <p>16 A. Yes, sir.</p> <p>17 Q. You mentioned some other internal</p> <p>18 matters. Can you describe what you meant by</p> <p>19 that?</p> <p>20 A. I really don't recall, sitting here</p> <p>21 today, the actual thing. It had to do with her</p> <p>22 relationship with some of the people that were</p> <p>23 under her.</p> <p>24 Q. Is this at Blimpie International or</p> <p>25 Blimpie California?</p>
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<p>1 A. Blimpie International.</p> <p>2 Q. Who was the head of human resources?</p> <p>3 A. A woman by the name of Pam Gower.</p> <p>4 Q. G-O-W-E-R?</p> <p>5 A. That's correct.</p> <p>6 Q. Did you ever learn the substance of</p> <p>7 Ms. Gower's complaints?</p> <p>8 A. At some point, I was apprised of it,</p> <p>9 yes.</p> <p>10 MR. SLEDZIK: Object to the form.</p> <p>11 Q. What were her concerns?</p> <p>12 A. I don't recall, sitting here today.</p> <p>13 Q. Are there any documents that would</p> <p>14 show that?</p> <p>15 A. There probably are, but I do not have</p> <p>16 the documents of Blimpie International.</p> <p>17 Q. Do you recall seeing any internal</p> <p>18 complaints by Ms. Gower about Ms. Gillette?</p> <p>19 MR. SLEDZIK: Objection to the form.</p> <p>20 BY MR. FRITZ:</p> <p>21 Q. Were they formal, e-mail, written or a</p> <p>22 letter?</p> <p>23 A. To the best of my recollection, they</p> <p>24 were formal and in the file.</p> <p>25 Q. And those would be in the custody of</p>	<p>1 Blimpie International?</p> <p>2 A. No.</p> <p>3 Q. In whose custody would they be?</p> <p>4 A. KBI.</p> <p>5 Q. What is KBI?</p> <p>6 A. A subsidiary of Kahala Corp. They</p> <p>7 purchased the assets and liabilities of Blimpie</p> <p>8 International.</p> <p>9 Q. Kahala Corp. did or KBI?</p> <p>10 A. KBI, which is a subsidiary of Kahala</p> <p>11 Corp.</p> <p>12 Q. Are you an owner of either of those</p> <p>13 two entities?</p> <p>14 A. No, sir.</p> <p>15 MR. SLEDZIK: "Those" being KBI or</p> <p>16 Kahala Corp.?</p> <p>17 MR. FRITZ: Right. Either one.</p> <p>18 A. No, sir.</p> <p>19 BY MR. FRITZ:</p> <p>20 Q. Did you receive any income from either</p> <p>21 of those companies?</p> <p>22 A. Yes.</p> <p>23 Q. Which one?</p> <p>24 A. KBI.</p> <p>25 Q. Are you an officer?</p>

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<p>1 A. No, sir.</p> <p>2 Q. Are you a director?</p> <p>3 A. No, sir.</p> <p>4 Q. What type of income do you receive?</p> <p>5 A. Consulting.</p> <p>6 Q. What type of consulting work did you</p> <p>7 do for them?</p> <p>8 A. Whatever they asked me to do.</p> <p>9 Q. Are you paid on a yearly basis,</p> <p>10 meaning you have a yearly salary or it's based on</p> <p>11 the time you put in?</p> <p>12 A. No, a yearly.</p> <p>13 MR. SLEDZIK: Objection.</p> <p>14 A. Yearly.</p> <p>15 Q. How much is that?</p> <p>16 A. \$350,000.</p> <p>17 Q. How much time would you estimate you</p> <p>18 provided consulting services for KBI?</p> <p>19 A. Whatever they asked me for, and they</p> <p>20 haven't asked me for anything so far.</p> <p>21 Q. Since what time period?</p> <p>22 A. Since they bought out the company.</p> <p>23 Q. When was that?</p> <p>24 A. January 23, 2006.</p> <p>25 Q. So since January 23, 2006, you haven't</p>	<p>1 performed any work for KBI, though come this</p> <p>2 January, you would have received almost \$700,000?</p> <p>3 A. Correct.</p> <p>4 Q. Does Blimpie of California provide any</p> <p>5 money to Kahala?</p> <p>6 A. No.</p> <p>7 Q. What about KBI --</p> <p>8 A. Well, yes, technically it does because</p> <p>9 KBI now owns the Blimpie trademarks.</p> <p>10 Q. All of them?</p> <p>11 A. Yes.</p> <p>12 And the agreement by which Blimpie of</p> <p>13 California got its rights to be the master</p> <p>14 licensee in California derives from an agreement</p> <p>15 with Blimpie International, and that agreement</p> <p>16 was assigned to KBI. And under that agreement,</p> <p>17 we pay a percentage of the royalties that we</p> <p>18 collect to KBI -- used to be Blimpie</p> <p>19 International.</p> <p>20 Q. When did that transaction take place?</p> <p>21 A. The transaction -- which, the</p> <p>22 agreement?</p> <p>23 MR. SLEDZIK: Object to the form.</p> <p>24 BY MR. FRITZ:</p> <p>25 Q. When did Kahala first become the owner</p>
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<p>1 of Blimpie trademarks?</p> <p>2 A. January 23, 2006.</p> <p>3 Q. Which is when you started receiving</p> <p>4 the salary?</p> <p>5 A. Consulting fee.</p> <p>6 Q. So does Blimpie of California have to</p> <p>7 provide any monies to Kahala Corp.?</p> <p>8 A. We collect royalties from the</p> <p>9 franchisees in California. A percentage of that</p> <p>10 royalty goes to the master license holder, the</p> <p>11 master trademark holder, formerly Blimpie</p> <p>12 International, now KBI.</p> <p>13 Q. What percent do you collect from the</p> <p>14 franchisees -- did Blimpie of California collect</p> <p>15 --</p> <p>16 A. We collect in total gross 6 percent of</p> <p>17 the net sales of the franchise.</p> <p>18 MR. SLEDZIK: Can I have a moment with</p> <p>19 my client? You were done with your answer,</p> <p>20 right?</p> <p>21 THE WITNESS: Yes.</p> <p>22 (Whereupon, the witness and his</p> <p>23 attorney leave the room.)</p> <p>24 (Recess taken.)</p> <p>25 A. I think the balance of that question</p>	<p>1 was out of the 6 percent that we collect, we give</p> <p>2 two and a half percent -- goes to the master.</p> <p>3 Q. Kahala?</p> <p>4 A. In this case, KBI. They now own the</p> <p>5 agreement.</p> <p>6 Q. Since January 23, 2006, do you know</p> <p>7 the amount of monies Blimpie of California has</p> <p>8 provided to KBI?</p> <p>9 A. No. Offhand, I don't.</p> <p>10 Q. Do you know an approximate number?</p> <p>11 A. I'd say about a hundred thousand a</p> <p>12 year.</p> <p>13 Q. So as part of the transactions that</p> <p>14 consummated on January 23, 2006, you receive a</p> <p>15 consulting fee, or it was agreed that you would</p> <p>16 receive a consulting fee, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Was there any provision made for</p> <p>19 monies to be paid to the shareholders' of Blimpie</p> <p>20 of California, meaning from the revenues of KBI?</p> <p>21 A. No.</p> <p>22 Q. Nothing?</p> <p>23 A. Nothing.</p> <p>24 Q. Was this ever considered?</p> <p>25 A. No.</p>

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<p>1 MR. SLEDZIK: Objection.</p> <p>2 MR. FRITZ:</p> <p>3 Q. Why not?</p> <p>4 A. Why yes?</p> <p>5 Q. Well, I mean, putting aside the fact</p> <p>6 that I get to ask the questions, but you're</p> <p>7 sending some of Blimpie of California's monies to</p> <p>8 KBI, who is in turn paying you \$350,000 a year;</p> <p>9 the shareholders of Blimpie of California aren't</p> <p>10 getting anything in return.</p> <p>11 A. You're twisting. You're really mixing</p> <p>12 apples and oranges.</p> <p>13 Q. Can you clarify?</p> <p>14 A. The two and a half percent that goes</p> <p>15 to KBI is by virtue of the agreement by which</p> <p>16 Blimpie got its rights going back to 1984. They</p> <p>17 have always paid two and a half percent since</p> <p>18 1984 of the royalty income that they collect to</p> <p>19 the master holder of the license. Prior to</p> <p>20 Blimpie International, there was a public</p> <p>21 company, Blimpie International is a private</p> <p>22 company and now KBI. It has nothing to do with</p> <p>23 anything that had to do with me. I was CEO of</p> <p>24 Blimpie International. They bought Blimpie</p> <p>25 International. As part of their buying the</p>	<p>1 assets and liabilities of Blimpie International,</p> <p>2 they entered into a consulting agreement with me,</p> <p>3 the then CEO of Blimpie International. It had</p> <p>4 nothing to do with Blimpie of California, as much</p> <p>5 as you way want to turn it.</p> <p>6 Q. Was it ever considered to send a</p> <p>7 smaller percentage of monies from BOC to KBI if</p> <p>8 you took a smaller consulting agreement?</p> <p>9 A. No.</p> <p>10 Q. How many employees does Blimpie of</p> <p>11 California have currently?</p> <p>12 A. Full-time, it has two.</p> <p>13 Q. Who are they?</p> <p>14 A. Ken Sylvain and Anthony Kern.</p> <p>15 Q. What are their titles and duties?</p> <p>16 A. Ken Sylvain is vice president of</p> <p>17 operations. Anthony Kern is director of</p> <p>18 operations.</p> <p>19 Q. Are they paid a salary?</p> <p>20 A. They are.</p> <p>21 Q. Do you know what it is?</p> <p>22 A. I believe Ken Sylvain is \$50,000 a</p> <p>23 year. I believe Anthony Kern is \$40,000 a year.</p> <p>24 Q. What are their duties?</p> <p>25 A. They are -- they do the day-to-day</p>
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<p>1 operational work of going into the stores,</p> <p>2 inspecting the stores, training franchisees on --</p> <p>3 new franchisees, training franchisees on resales,</p> <p>4 checking whether the stores are clean, everything</p> <p>5 is operationally correct in the stores, which we</p> <p>6 required to do under our master agreement.</p> <p>7 Q. Are there any other employees besides</p> <p>8 those two?</p> <p>9 A. There are people who do work for</p> <p>10 Blimpie of California, that's correct.</p> <p>11 Q. Who are those people?</p> <p>12 A. One of them would be Alonzo Batto</p> <p>13 (phonetic), who does franchise sales.</p> <p>14 Q. Are you saying he's not an actual</p> <p>15 employee of the corporation, but he provides --</p> <p>16 A. He.</p> <p>17 MR. SLEDZIK: Let Mr. Fritz finish.</p> <p>18 Q. Is it your testimony that Mr. Batto is</p> <p>19 not an employee of the company, but he receives</p> <p>20 some type of compensation based on services that</p> <p>21 he provides?</p> <p>22 A. It's Mister.</p> <p>23 Q. Mister?</p> <p>24 A. Mr. Batto is a franchise salesperson.</p> <p>25 We share Mr. Batto -- Mr. Batto's time is shared</p>	<p>1 with Blimpie of California and Maui Tacos and</p> <p>2 Smoothie Island, selling franchises for all three</p> <p>3 companies.</p> <p>4 Q. And those latter two entities are</p> <p>5 owned by X2Y1?</p> <p>6 A. That's correct.</p> <p>7 Q. Is Ms. Ricci an employee?</p> <p>8 A. No.</p> <p>9 Q. Is she an officer?</p> <p>10 MR. SLEDZIK: Objection.</p> <p>11 A. She's secretary of the corporation.</p> <p>12 BY MR. FRITZ:</p> <p>13 Q. But she doesn't get paid as an</p> <p>14 employee of the corporation?</p> <p>15 A. She does not get paid as an employee</p> <p>16 of the company.</p> <p>17 Q. What are Blimpie's sources of income</p> <p>18 besides the royalties that we've already</p> <p>19 discussed that come from the franchise of</p> <p>20 California?</p> <p>21 MR. SLEDZIK: Blimpie of California</p> <p>22 you mean?</p> <p>23 MR. FRITZ: Yes.</p> <p>24 A. Licensing of franchises, resale of</p> <p>25 franchises, training fees, lease review fees. I</p>

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<p>1 think that pretty much covers it.</p> <p>2 Q. You are the president of Blimpie of</p> <p>3 California. What are your duties?</p> <p>4 A. I oversee the operations of the</p> <p>5 company. I do all the legal work for the</p> <p>6 company, except litigation. I set marketing</p> <p>7 direction for the company. I review all the</p> <p>8 operational reports of the company. I send</p> <p>9 out -- I'm the one who sends out -- in most</p> <p>10 cases, I'm the one that sends out default letters</p> <p>11 if there is a problem. I'll help negotiate the</p> <p>12 contracts with the food Distributors.</p> <p>13 Q. What type of legal work were you</p> <p>14 referring to?</p> <p>15 A. I do the UFOC, the franchise</p> <p>16 agreements, if we have a new franchise. I review</p> <p>17 all the leases for any franchise location, any</p> <p>18 franchisees' location. I draw the documents, the</p> <p>19 addendums, and everything else that goes with the</p> <p>20 leases for a new franchise. I do all the resale</p> <p>21 documents on any resale of any franchise.</p> <p>22 Q. Would you say that the legal work is</p> <p>23 somewhat repetitive, meaning if you have a new</p> <p>24 store, and you've essentially already done the</p> <p>25 same type of work for a previously acquired</p>	<p>1 store -- meaning a previous store that's under</p> <p>2 your umbrella -- isn't that kind of the same</p> <p>3 work?</p> <p>4 A. The same as a litigator doing</p> <p>5 litigation, yes, it's the same thing.</p> <p>6 Q. So you are not -- would it be fair to</p> <p>7 say you are not really diving into new areas of</p> <p>8 law, you are copying, pasting and maybe inserting</p> <p>9 some new names?</p> <p>10 A. No.</p> <p>11 Q. How much time in terms of legal work</p> <p>12 do you put in in a week for Blimpie of</p> <p>13 California?</p> <p>14 A. I can't say in a week. There may be</p> <p>15 weeks that I do nothing.</p> <p>16 Q. On a month?</p> <p>17 A. It could be, I mean, we've had months</p> <p>18 where we've had a few shopping center leases. If</p> <p>19 you have ever read a shopping center lease and</p> <p>20 really taken it apart, that project alone can</p> <p>21 take six, seven, eight, nine hours. Then having</p> <p>22 to negotiate the addendums with the landlords can</p> <p>23 take a substantial amount of time. It's -- this</p> <p>24 past year, it was busy with leases, resales. On</p> <p>25 every resale, I've got to do the leases. Also, I</p>
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<p>1 got to renegotiate the addendums. So it could be</p> <p>2 a substantial amount of time.</p> <p>3 Q. How many franchises pay royalties</p> <p>4 to --</p> <p>5 A. Right now, it's 30.</p> <p>6 Q. Is that an increase or decrease from</p> <p>7 the time that Spencer was a director?</p> <p>8 A. Probably decreased a couple since she</p> <p>9 was director.</p> <p>10 Q. Do you know what that is attributed</p> <p>11 to?</p> <p>12 A. Yeah, it's a -- first of all, it's the</p> <p>13 nature of the business, but a lot of it, one of</p> <p>14 it, was attributed to someone, I think it was</p> <p>15 like Winchel's Donuts or one of those, decided to</p> <p>16 go out of the Blimpie business, so I think they</p> <p>17 closed four restaurants they had or Mobil Oil</p> <p>18 went out of the whole Blimpie business</p> <p>19 nationally. And that was derived from a national</p> <p>20 agreement. Blimpie has on a global scale had</p> <p>21 it's problem over the last ten years.</p> <p>22 Q. Could any of that decline in numbers</p> <p>23 be attributed to the fact that Spencer is not a</p> <p>24 director or officer of Blimpie of California?</p> <p>25 A. Absolutely not.</p>	<p>1 Q. How much time a month would you say</p> <p>2 you put in reviewing operational reports?</p> <p>3 MR. SLEDZIK: Object to the form.</p> <p>4 A. Probably four to five hours a month.</p> <p>5 Q. A month?</p> <p>6 A. Yeah. They're monthly reports.</p> <p>7 Q. I'm sorry, these reports are from whom</p> <p>8 again?</p> <p>9 A. They're the operational reports or the</p> <p>10 reports that operational people do when they go</p> <p>11 around to the franchise stores.</p> <p>12 Q. So from Mr. Kern and Mr. Sylvain?</p> <p>13 A. Yes.</p> <p>14 Q. Have you ever been loaned any money</p> <p>15 from Blimpie of California?</p> <p>16 A. Yes.</p> <p>17 Q. When was the first time?</p> <p>18 A. I don't recall.</p> <p>19 Q. Was it at a time when Mrs. Gillette</p> <p>20 was a director?</p> <p>21 A. Was I ever loaned -- rephrase the</p> <p>22 question, please.</p> <p>23 Q. At any point in time when Ms. Gillette</p> <p>24 became a shareholder, which I believe you said</p> <p>25 was sometime in 1998, at any point thereafter.</p>

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<p>1 Were you ever loaned any money from Blimpie of</p> <p>2 California?</p> <p>3 A. Yes.</p> <p>4 Q. When was the first time?</p> <p>5 A. I don't recall the date.</p> <p>6 Q. Do you recall the amount of the loan?</p> <p>7 A. No, I don't.</p> <p>8 Q. Do you recall whether there was a</p> <p>9 written loan agreement?</p> <p>10 A. No, there wasn't.</p> <p>11 Q. Do you recall --</p> <p>12 MR. SLEDZIK: Wait. You asked him</p> <p>13 whether he remembered. He's answered, No,</p> <p>14 there wasn't.</p> <p>15 You're answering that there wasn't a</p> <p>16 written agreement.</p> <p>17 A. The question I thought was was there a</p> <p>18 written agreement.</p> <p>19 BY MR. FRITZ:</p> <p>20 Q. Was there a written loan agreement?</p> <p>21 A. Not to my recollection.</p> <p>22 Q. Do you recall the rate of interest, if</p> <p>23 any, by which you had to pay back the loan?</p> <p>24 A. Six or seven percent.</p> <p>25 Q. Do you recall the amount of time that</p>	<p>1 you had to repay the loan?</p> <p>2 A. It was open. It wasn't -- it was a</p> <p>3 demand loan. There was no time frame.</p> <p>4 Q. A demand by the corporation for it</p> <p>5 back?</p> <p>6 A. Yes.</p> <p>7 Q. Would that be by the board or by the</p> <p>8 shareholders?</p> <p>9 A. By the board.</p> <p>10 Q. Who was chairman of the board?</p> <p>11 A. I am.</p> <p>12 Q. And the only other board member is</p> <p>13 Ms. Ricci?</p> <p>14 A. Today.</p> <p>15 Q. Today?</p> <p>16 A. Today, the only other board member is</p> <p>17 Ms. Ricci.</p> <p>18 Q. Do you still owe money to Blimpie of</p> <p>19 California?</p> <p>20 A. Yes.</p> <p>21 Q. So, in order for it to be repaid,</p> <p>22 either yourself or Mr. Ricci would have to demand</p> <p>23 it back?</p> <p>24 A. Yes.</p> <p>25 Q. How come you haven't demanded it back?</p>
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<p>1 A. Well, basically, I'm the one that is</p> <p>2 on the hook for all the money the company has --</p> <p>3 I put up all the money for the company. I'm the</p> <p>4 guarantor on the credit lines. My family just</p> <p>5 loaned the company \$150,000. Any time the</p> <p>6 company needs money, I'm the guy who's got to put</p> <p>7 it in.</p> <p>8 Q. If someone had the power to terminate</p> <p>9 Ms. Ricci, who would it be; meaning, they're the</p> <p>10 majority shareholder, they have the power of</p> <p>11 majority over the shareholder, they're the</p> <p>12 chairman of the board?</p> <p>13 A. Me.</p> <p>14 Q. So is it fair to assume that Ms. Ricci</p> <p>15 would never demand that you pay back the loan</p> <p>16 since she is employed at your whim?</p> <p>17 MR. SLEDZIK: Object to form.</p> <p>18 A. No, it's not fair to assume that. You</p> <p>19 have to ask Ms. Ricci that.</p> <p>20 BY MR. FRITZ:</p> <p>21 Q. I believe you said you don't recall</p> <p>22 the time that you were first loaned this money?</p> <p>23 A. Correct.</p> <p>24 Q. Do you know if the shareholders</p> <p>25 approved of the loan?</p>	<p>1 MR. SLEDZIK: The loan being the first</p> <p>2 loan?</p> <p>3 Q. The first loan, yes.</p> <p>4 A. Are you asking about was there a</p> <p>5 formal meeting of shareholders to approve the</p> <p>6 loan?</p> <p>7 Q. Yes, I am.</p> <p>8 A. No, there was not.</p> <p>9 Q. Do you know why?</p> <p>10 A. We're a small company. At that time,</p> <p>11 it was just a one person company, basically. So,</p> <p>12 if I had anything going on, I spoke to mom or me.</p> <p>13 We just talked and we did it.</p> <p>14 Q. So, you approved the loan to yourself?</p> <p>15 MR. SLEDZIK: Objection.</p> <p>16 A. Initially?</p> <p>17 Q. Yes.</p> <p>18 A. Yes.</p> <p>19 Q. You used the word "initially." Did</p> <p>20 that change at any point in time?</p> <p>21 A. Only to the extent of knowledge. I</p> <p>22 mean, again, this is a tiny little company. I am</p> <p>23 the sole support of this company and there are</p> <p>24 times that I took advances. Ms. Gillette, during</p> <p>25 her tenure, was aware of it. As a small company,</p>

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<p>1 no, we didn't hold formal meetings to do a lot of</p> <p>2 these things.</p> <p>3 Q. So there was no shareholder meeting at</p> <p>4 which the advance to you was approved other than</p> <p>5 what purportedly may have happened in October of</p> <p>6 this year.</p> <p>7 MR. SLEDZIK: Object to the form.</p> <p>8 A. Correct.</p> <p>9 Q. So October 8, 2007 --</p> <p>10 A. I don't know if that is correct.</p> <p>11 There may have been an earlier meeting at which</p> <p>12 something was approved. Off the top of my head,</p> <p>13 I don't recall.</p> <p>14 Q. Do you recall what year that meeting</p> <p>15 may have occurred?</p> <p>16 A. It would be post-2004.</p> <p>17 Q. Was notice of that meeting sent to the</p> <p>18 shareholders?</p> <p>19 A. It wasn't a shareholder meeting. It</p> <p>20 was not a shareholder meeting. It might have</p> <p>21 been a board of directors meeting. I have to</p> <p>22 check. I'm not saying it was, but I don't want</p> <p>23 to categorically cut off the fact it was not,</p> <p>24 because then I will only be told that I said it</p> <p>25 was.</p>	<p>1 Q. If that meeting did occur, would</p> <p>2 minutes have been taken at that meeting?</p> <p>3 A. Yes.</p> <p>4 Q. Would Blimpie of California have</p> <p>5 copies of the minutes of that meeting?</p> <p>6 A. Anything post-2003 we have, yes.</p> <p>7 Q. You don't remember the amount of the</p> <p>8 loan?</p> <p>9 A. I haven't taken any loans in the last</p> <p>10 bunch of years. I haven't taken any loans from</p> <p>11 the company in quite a few years.</p> <p>12 Q. What was the gross amount of the loans</p> <p>13 you have taken?</p> <p>14 A. At any one point?</p> <p>15 Q. Let's start with the first time you</p> <p>16 received a loan.</p> <p>17 A. I don't recall what the amount was at</p> <p>18 that time.</p> <p>19 Q. Let's go this way then: How much</p> <p>20 money in loans have you received from Blimpie of</p> <p>21 California?</p> <p>22 A. Ever?</p> <p>23 Q. Ever.</p> <p>24 A. I'm going to make -- I think at the</p> <p>25 peak, I didn't have a chance to review it,</p>
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<p>1 tomorrow I might have known it -- \$189,000 I</p> <p>2 think at the peak. Maybe that would have been</p> <p>3 maybe the most.</p> <p>4 Q. You expressed a concern that you</p> <p>5 haven't reviewed documents. I'll set forth that</p> <p>6 to the extent you need to continue your</p> <p>7 deposition because Plaintiff would have received</p> <p>8 additional documents, certainly you can feel free</p> <p>9 to amend your statements.</p> <p>10 A. I will do that.</p> <p>11 Q. And of the approximately 189,000 that</p> <p>12 you believe you have received, have you ever paid</p> <p>13 any of that back?</p> <p>14 A. Yes.</p> <p>15 Q. How much?</p> <p>16 A. I don't recall the amounts, but</p> <p>17 overtime, I paid different amounts. Every time</p> <p>18 the company needed money, I put it back.</p> <p>19 Q. How do you put it back?</p> <p>20 A. Cash.</p> <p>21 Q. Can you approximate the amount?</p> <p>22 A. Well, in the last few years, I know</p> <p>23 that at one point a couple of years ago I had to</p> <p>24 write a check for 22,000. I did -- 20, in that</p> <p>25 range, 20 or 22,000. I wrote that one back.</p>	<p>1 But, again, I'm only focused on the period of the</p> <p>2 lawsuit.</p> <p>3 Q. What was the purpose of the loan?</p> <p>4 MR. SLEDZIK: A specific loan?</p> <p>5 MR. FRITZ: Any of them.</p> <p>6 A. I asked for the money.</p> <p>7 BY MR. FRITZ:</p> <p>8 Q. Was there any corporate purpose?</p> <p>9 A. The only corporate purpose is the fact</p> <p>10 that I don't take a salary from the company, and</p> <p>11 the company can't afford to pay me a salary. And</p> <p>12 so -- and I've been running the company for 17</p> <p>13 years. And so, during the period, there have</p> <p>14 been times when I've asked for an advance from</p> <p>15 the company.</p> <p>16 Q. Can you explain why the company can</p> <p>17 afford a loan, but not to pay you a salary?</p> <p>18 A. Yes.</p> <p>19 Q. Please do.</p> <p>20 A. There is a difference. The company</p> <p>21 needs the money back, and it's an asset on the</p> <p>22 books I'm there to give them the money back. If</p> <p>23 the company pays me a salary it's a hit on the</p> <p>24 books and it hits the net worth and then I got to</p> <p>25 put the money back anyway.</p>

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<p>1 Q. Can't you just decrease your salary?</p> <p>2 A. As much as you decrease yours.</p> <p>3 Q. I'm not in control of the amount of</p> <p>4 salary that I make, so --</p> <p>5 A. I don't take a salary that's ever</p> <p>6 exceeded -- I think in all the years I worked for</p> <p>7 Blimpie of California, I think the most I've ever</p> <p>8 taken was \$50,000 in one year. I think most of</p> <p>9 the time it's been in the range of 12 to 20 or</p> <p>10 zero. So, from zero, I don't know how you reduce</p> <p>11 it.</p> <p>12 Q. The testimony was that you take a loan</p> <p>13 and not a salary because a loan you can pay back</p> <p>14 more quickly, if I'm summarizing your testimony</p> <p>15 correctly. So my question is why couldn't you</p> <p>16 simply decrease your salary so the corporation</p> <p>17 would have more money that way?</p> <p>18 A. That's a silly question, truly a silly</p> <p>19 question. I theoretically shouldn't be working</p> <p>20 for nothing, and most years I've worked for</p> <p>21 nothing to try and build the company. So there's</p> <p>22 never been a salary from which to really reduce</p> <p>23 the salary, if I'm getting -- the couple of years</p> <p>24 I may have gotten 12 to 20. How much would you</p> <p>25 like me to reduce it?</p>	<p>1 Q. We'd like to be --</p> <p>2 A. Zero.</p> <p>3 Q. We haven't said that.</p> <p>4 A. You have said that in the past.</p> <p>5 Q. Is the reason why you didn't take a</p> <p>6 salary is because you didn't want to report</p> <p>7 income to the --</p> <p>8 A. Absolutely not, I reported an enormous</p> <p>9 amount of income to the IRS.</p> <p>10 Q. In what year?</p> <p>11 A. Every year.</p> <p>12 Q. How much salary did you report?</p> <p>13 A. I didn't say I reported salary from</p> <p>14 Blimpie of California.</p> <p>15 Q. Have you reported any salary from</p> <p>16 Blimpie of California to the IRS?</p> <p>17 A. Probably back in the '90s a couple of</p> <p>18 years, yes. I haven't taken anything since then</p> <p>19 until I was just awarded a bonus, and yes, I</p> <p>20 reported it.</p> <p>21 Q. What was the amount of that bonus?</p> <p>22 A. 10,000 for one year, and 50,000 for</p> <p>23 another year.</p> <p>24 Q. Did you report the loans as income?</p> <p>25 A. No, sir.</p>
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<p>1 Q. Do you consider it income?</p> <p>2 A. No, sir.</p> <p>3 Q. In actuality, is it income?</p> <p>4 A. No, sir.</p> <p>5 Q. Is the money in your pocket?</p> <p>6 A. It's a silly question.</p> <p>7 Q. Do you have corporate funds in your</p> <p>8 pocket?</p> <p>9 A. No, I have loans that were made to me.</p> <p>10 They're not corporate funds. There are loans</p> <p>11 that were made. They are loans to me. It was</p> <p>12 not income.</p> <p>13 Q. You're saying those weren't corporate</p> <p>14 funds?</p> <p>15 A. Oh, the money that was given to me</p> <p>16 came from the corporation.</p> <p>17 Q. And the purpose is what again? What</p> <p>18 was the corporation purpose for giving you this</p> <p>19 loan?</p> <p>20 A. Because the company wasn't paying me a</p> <p>21 salary, and couldn't afford to pay me a salary,</p> <p>22 so at certain times when I asked for advances, it</p> <p>23 gave me the advances.</p> <p>24 Q. Instead of paying you advances, why</p> <p>25 couldn't they just give you a small nominal</p>	<p>1 salary? That's what I'm having trouble</p> <p>2 understanding.</p> <p>3 A. Because the company would need the</p> <p>4 money back, and I am the sole support of the</p> <p>5 company. So I wasn't prepared to take a small</p> <p>6 salary, pay tax on it, have to pay back the money</p> <p>7 to the company on after-tax dollars.</p> <p>8 (Whereupon, Plaintiff's Exhibit 1,</p> <p>9 financial statements, were marked for</p> <p>10 identification as of today's date.)</p> <p>11 BY MR. FRITZ:</p> <p>12 Q. Take a look at what's been marked as</p> <p>13 Plaintiff's Exhibit 1. Let me know when you're</p> <p>14 finished.</p> <p>15 MR. SLEDZIK: For the record, I'm</p> <p>16 reading it as December 31, 2002 and 2001;</p> <p>17 December 31, 2003 and 2002; December 31,</p> <p>18 2004 and 2003; December 31, 2005 and 2004;</p> <p>19 December 31, 2005 -- I'm sorry, December 31,</p> <p>20 2006 and 2005.</p> <p>21 BY MR. FRITZ:</p> <p>22 Q. Do you recognize these documents?</p> <p>23 A. I do.</p> <p>24 Q. What are they?</p> <p>25 A. The financial statements of the</p>

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<p>1 corporation.</p> <p>2 Q. Turning to the balance sheet, which</p> <p>3 looks like it's about the -- maybe the fifth page</p> <p>4 in.</p> <p>5 A. Which year?</p> <p>6 Q. 2001.</p> <p>7 A. Yes, sir.</p> <p>8 Q. Where it says "advances to officers,"</p> <p>9 and it has the amount of \$199,059, do you know to</p> <p>10 which officers those advances were made?</p> <p>11 A. I'm seeing different -- advances to</p> <p>12 officers 199,0059? Ms. Gillette and myself.</p> <p>13 Q. How much was made to yourself?</p> <p>14 A. I don't recall, because that number</p> <p>15 includes interest.</p> <p>16 Q. How much was made to Ms. Gillette?</p> <p>17 A. I think at that time, I think it was</p> <p>18 \$38,000.</p> <p>19 Q. And the balance would be an advance to</p> <p>20 you?</p> <p>21 A. No, the interest to Ms. Gillette,</p> <p>22 interest to me, and advance to me.</p> <p>23 Q. Moving to 2002, just to the left it</p> <p>24 appears that the amount of outstanding advance</p> <p>25 increased by \$60,000?</p>	<p>1 A. That's correct.</p> <p>2 Q. Do you know to which officer that</p> <p>3 \$60,000 went to? It includes, I understand --</p> <p>4 A. It includes interest, 10,000 something</p> <p>5 to Ms. Gillette, and I don't recall the rest, if</p> <p>6 there was an adjustment or something else. I</p> <p>7 know that we gave you a spreadsheet, but I don't</p> <p>8 recall.</p> <p>9 Q. You don't recall receiving additional</p> <p>10 monies in 2002?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you have any records that would</p> <p>13 show that?</p> <p>14 A. Yes. I believe you were given those</p> <p>15 records.</p> <p>16 MR. SLEDZIK: Why don't you identify</p> <p>17 them.</p> <p>18 A. I thought there was a spreadsheet that</p> <p>19 showed you.</p> <p>20 Q. Are you referring to the spreadsheet</p> <p>21 that was provided in advance of that October 2007</p> <p>22 shareholder meeting?</p> <p>23 A. I don't recall.</p> <p>24 Q. You don't recall if that is the</p> <p>25 spreadsheet or --</p>
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<p>1 A. I don't recall if that is the</p> <p>2 spreadsheet.</p> <p>3 Q. Do you know what the corporate purpose</p> <p>4 was for increasing the amount of advances to</p> <p>5 officers from 2001 to 2002?</p> <p>6 A. No, I don't recall.</p> <p>7 Q. Did the shareholders' approve it?</p> <p>8 A. In a formal meeting, not to my</p> <p>9 recollection.</p> <p>10 Q. Was it your understanding at the time</p> <p>11 that the shareholders did have to formally</p> <p>12 approve it?</p> <p>13 MR. SLEDZIK: Object to the form.</p> <p>14 A. No, it wasn't my understanding.</p> <p>15 Q. Same question with respect to the</p> <p>16 first time that you received a loan: Was it your</p> <p>17 understanding at the time that you had to have</p> <p>18 shareholders' approval in order for the</p> <p>19 corporation to make a loan?</p> <p>20 MR. SLEDZIK: Objection to the form.</p> <p>21 A. I don't know that you need shareholder</p> <p>22 approval, no.</p> <p>23 Q. What type --</p> <p>24 A. Board approval maybe.</p> <p>25 Q. In 2002, do you know what the net</p>	<p>1 income of Blimpie of California was?</p> <p>2 A. 31,524.</p> <p>3 Q. Was any of that amount paid in the</p> <p>4 form of dividends to the shareholders?</p> <p>5 A. No.</p> <p>6 Q. Do you know why not?</p> <p>7 A. Because the company isn't in a</p> <p>8 position to pay dividends.</p> <p>9 Q. But if it has \$31,000 in net, can you</p> <p>10 explain why --</p> <p>11 A. Companies need working capital. And</p> <p>12 if you take a look at the balance sheet, there</p> <p>13 was not that much in working capital and there</p> <p>14 was no ability to pay dividends.</p> <p>15 Q. Did you ever considering paying back</p> <p>16 some of the loan to you in order to provide the</p> <p>17 corporation with working capital, and so it could</p> <p>18 provide the shareholders with dividends?</p> <p>19 A. That wouldn't change, because it has</p> <p>20 to do also with the net worth and the ability of</p> <p>21 the company to move forward. We're not in a</p> <p>22 position yet to pay dividends to anybody,</p> <p>23 considering all the money that comes from me and</p> <p>24 my family, and the guarantees we're on.</p> <p>25 Q. You mentioned net worth. What is the</p>

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<p>1 net worth of Blimpie of California today?</p> <p>2 A. Can I take a look?</p> <p>3 Q. Absolutely.</p> <p>4 A. As of December 31, 2006, it was</p> <p>5 \$140,000.</p> <p>6 Q. Did you consider that the value of</p> <p>7 Blimpie of California?</p> <p>8 A. Pretty much.</p> <p>9 Q. Has that number, given your position</p> <p>10 at the corporation, increased or decreased?</p> <p>11 A. It's decreased I think slightly.</p> <p>12 Q. What would you estimate it at?</p> <p>13 A. I don't know.</p> <p>14 Q. A hundred thousand dollars?</p> <p>15 A. I don't know.</p> <p>16 Q. Have you ever employed any valuation</p> <p>17 experts to value the corporation?</p> <p>18 A. I think we did.</p> <p>19 Q. When was that?</p> <p>20 A. Several years ago.</p> <p>21 Q. Do you recall the results of that?</p> <p>22 A. I don't, but I can get it for you.</p> <p>23 MR. FRITZ: Please. We would request</p> <p>24 that.</p> <p>25 Q. Do you know what that valuation was,</p>	<p>1 based upon what data?</p> <p>2 A. It would be based upon the data that I</p> <p>3 assume -- just based on several things. Based on</p> <p>4 the financial statements of the company. There's</p> <p>5 different ways they do valuations. Based on</p> <p>6 industries, but I'm sure the report, if there was</p> <p>7 a report, I think that would lay it out.</p> <p>8 Q. Has anyone ever offered to buy Blimpie</p> <p>9 of California?</p> <p>10 A. No. Not to my recollection.</p> <p>11 Q. Have you ever sought to sell it?</p> <p>12 A. Not to my recollection.</p> <p>13 Q. How much would you sell it for?</p> <p>14 A. I haven't even thought about it,</p> <p>15 Counselor.</p> <p>16 Q. If Ms. Gillette offered \$200,000 to</p> <p>17 buy Blimpie of California, would you consider</p> <p>18 that a reasonable offer?</p> <p>19 A. I wouldn't consider it. I'm not</p> <p>20 interested in selling.</p> <p>21 Q. Why not?</p> <p>22 A. I want to build the company up. I'm a</p> <p>23 young guy and I got a long way to go.</p> <p>24 Q. Is there any number that you would</p> <p>25 take and seriously consider in exchange for</p>
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<p>1 buying the corporation --</p> <p>2 A. I guess in the Alex Rodriguez class.</p> <p>3 Q. So, that would be \$25 million.</p> <p>4 Let's stick with the 2002. We've been</p> <p>5 discussing the \$60,000 that was advanced to some</p> <p>6 officer, and which also includes interest. Do</p> <p>7 you know if there was a written loan agreement</p> <p>8 pertaining to those advances?</p> <p>9 MR. SLEDZIK: Objection to the form.</p> <p>10 A. No.</p> <p>11 Q. Do you know the interest rate that</p> <p>12 applies for that loan?</p> <p>13 A. Six or 7 percent has been for all the</p> <p>14 loans.</p> <p>15 Q. The time that it's paid back, is that</p> <p>16 also when one of the members of the board</p> <p>17 requests it?</p> <p>18 A. Very honestly, it's a small company.</p> <p>19 It's never been discussed when it was going to be</p> <p>20 paid back.</p> <p>21 Q. So, in theory, you could never pay it</p> <p>22 back, and still have the money in your pocket or</p> <p>23 whoever the advance was made to?</p> <p>24 MR. SLEDZIK: Object to form.</p> <p>25 A. In theory, yes.</p>	<p>1 (Off the record discussion.)</p> <p>2 (Luncheon Recess Taken. Time Noted:</p> <p>3 12:21 p.m.)</p> <p>4 A F T E R N O O N S E S S I O N</p> <p>5 (1:17 p.m.)</p> <p>6</p> <p>7 J E F F R E Y E N D E R V E L T, resumed having</p> <p>8 been previously duly sworn, was examined and</p> <p>9 testified further as follows:</p> <p>10</p> <p>11 EXAMINATION (Cont'd.)</p> <p>12 BY MR. FRITZ:</p> <p>13 Q. Good afternoon. I believe before we</p> <p>14 took a break were talking about advances to</p> <p>15 officers in the year 2002, and I apologize if I</p> <p>16 asked this. Was there a shareholder approval of</p> <p>17 those advances?</p> <p>18 A. Not to my recollection.</p> <p>19 Q. What was the purpose of the advances</p> <p>20 in that year, the corporate purpose?</p> <p>21 A. If I took one. I don't recall. I</p> <p>22 want to go back and state again, I was going to</p> <p>23 check the records, but sitting here today, I</p> <p>24 don't recall.</p> <p>25 Q. Did you pay income on whatever</p>

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<p>1 loans -- have you ever paid any income tax on any</p> <p>2 loans or amounts that you received from Blimpie</p> <p>3 of California?</p> <p>4 A. One doesn't pay income tax on loans.</p> <p>5 Q. So the answer is?</p> <p>6 A. No, no.</p> <p>7 Q. In 2002, did Blimpie of California pay</p> <p>8 any dividends to shareholders?</p> <p>9 A. No.</p> <p>10 Q. Looking at the same balance sheet that</p> <p>11 we've been looking at numbered page two, it's</p> <p>12 about the fifth page?</p> <p>13 MR. SLEDZIK: The one labeled</p> <p>14 "Assets"?</p> <p>15 MR. FRITZ: Yes.</p> <p>16 A. Yes.</p> <p>17 BY MR. FRITZ:</p> <p>18 Q. Under "Stockholder's Equity" at the</p> <p>19 bottom where it says "640 shares issued</p> <p>20 outstanding," what does that mean?</p> <p>21 A. I don't know. That's the first time</p> <p>22 that I've seen it -- that I recognize it. I</p> <p>23 don't know.</p> <p>24 Q. Do you know how many shares of BOC are</p> <p>25 issued and outstanding?</p>	<p>1 A. To my recollection, 1,000.</p> <p>2 Q. So this number is incorrect?</p> <p>3 A. That's my understanding. When I look</p> <p>4 at it, I think so.</p> <p>5 Q. So if someone had -- if in fact there</p> <p>6 were 1,000 shares and someone owned 150 shares,</p> <p>7 they would own 15 percent of the corporation?</p> <p>8 A. That's correct.</p> <p>9 Q. But if this number is correct, 640,</p> <p>10 and someone has 150 shares, they would own</p> <p>11 approximately 23 percent?</p> <p>12 A. That's correct.</p> <p>13 Q. Do you have records that would</p> <p>14 indicate whether it's 640 shares outstanding or</p> <p>15 1000?</p> <p>16 A. I'll check.</p> <p>17 Q. Why don't we go to the next financial</p> <p>18 statement of 2003.</p> <p>19 MR. SLEDZIK: The assets page, Page 2.</p> <p>20 BY MR. FRITZ:</p> <p>21 Q. Do you see where the advances to</p> <p>22 officers increased from approximately 282,000 to</p> <p>23 335,000 between the year 2002 and 2003?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know to whom that was paid?</p>
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<p>1 A. Well, a portion of it would be</p> <p>2 interest. The difference, I don't know.</p> <p>3 Probably it was either Spencer or myself. I</p> <p>4 don't recall.</p> <p>5 Q. Would you have records showing that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what the terms of that</p> <p>8 advance was, I mean, the interest when it was to</p> <p>9 be repaid, if ever?</p> <p>10 A. The interest would have been the same</p> <p>11 as all the others, 6 to 7 percent. What was the</p> <p>12 other part of the question?</p> <p>13 Q. The time to repay it?</p> <p>14 A. There was no time set.</p> <p>15 Q. Was there any loan agreement?</p> <p>16 A. No.</p> <p>17 Q. Did the shareholders approve of those</p> <p>18 advances at the meeting?</p> <p>19 A. Was there a formal shareholders</p> <p>20 meeting? No, there was not.</p> <p>21 Q. And the purpose of those loans, the</p> <p>22 corporate purpose was what?</p> <p>23 A. The company was not paying me a</p> <p>24 salary -- if it was me, and it's hard for me to</p> <p>25 say, I don't have the information in front of me.</p>	<p>1 Q. So rather than go through each of</p> <p>2 these years, is it more efficient if we revisit</p> <p>3 this topic after you've reviewed the records?</p> <p>4 MR. SLEDZIK: I think he indicated</p> <p>5 there was a spreadsheet that was provided to</p> <p>6 you pursuant to the shareholders agreement</p> <p>7 that would refresh his recollection, if you</p> <p>8 want to show him that. I don't know what</p> <p>9 you've brought with you.</p> <p>10 MR. FRITZ: I don't have that with me.</p> <p>11 We can go through it next time, but we'll go</p> <p>12 through each of the years. If he recalls, he</p> <p>13 recalls.</p> <p>14 Q. What was the net income of Blimpie of</p> <p>15 California in 2002?</p> <p>16 A. \$195,000.</p> <p>17 Q. Was any of that paid shareholders</p> <p>18 dividends?</p> <p>19 A. No.</p> <p>20 Q. Do you know why?</p> <p>21 A. Yes. We didn't issue dividends.</p> <p>22 Q. Whose decision was that?</p> <p>23 A. The board of directors.</p> <p>24 Q. Which includes you. And who else did</p> <p>25 that include at the time?</p>

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<p>1 A. Spencer.</p> <p>2 Q. Do you know why that decision was made</p> <p>3 not to pay dividends?</p> <p>4 A. Yes. We're too small a company to pay</p> <p>5 dividends. We don't have that economic clout.</p> <p>6 We still have loans outstanding that I guaranty.</p> <p>7 Q. Would it be fair to say that if you</p> <p>8 repaid some of the loans that were made to you,</p> <p>9 then there would be more operating capital for</p> <p>10 the corporation and thus dividends could be paid?</p> <p>11 MR. SLEDZIK: Objection to the form.</p> <p>12 A. No. We're not in a position to pay</p> <p>13 dividends.</p> <p>14 Q. Ever?</p> <p>15 A. Not now. When the company grows,</p> <p>16 maybe. A small company like this? No, sir.</p> <p>17 Q. What does the net have to be in your</p> <p>18 opinion?</p> <p>19 MR. SLEDZIK: Wait. Wait. Objection</p> <p>20 to the form.</p> <p>21 BY MR. FRITZ:</p> <p>22 Q. In your --</p> <p>23 A. It's more of a matter of what the</p> <p>24 equity has to be. I would say it would have to</p> <p>25 be at least over a half a million dollars.</p>	<p>1 Q. What is it currently?</p> <p>2 A. At this point, it was 275,000. What</p> <p>3 it is currently? I would have to go to the --</p> <p>4 140,000.</p> <p>5 MR. SLEDZIK: This is at the end of</p> <p>6 2006.</p> <p>7 BY MR. FRITZ:</p> <p>8 Q. I believe you testified earlier you</p> <p>9 think it's less now, but you are not sure?</p> <p>10 A. Correct.</p> <p>11 Q. Why don't we go to 2004, the balance</p> <p>12 sheet page that has assets and liabilities. Do</p> <p>13 you see where the advance to officers increased</p> <p>14 from 335,000 to approximately to 378,000?</p> <p>15 A. I've got the wrong years.</p> <p>16 Yes, I see that.</p> <p>17 Q. Do you know to whom that approximately</p> <p>18 42 or 43,000 was paid, that advance?</p> <p>19 MR. SLEDZIK: I Object to the form.</p> <p>20 A. I believe it was interest. I don't</p> <p>21 believe there was actually a loan that year. I</p> <p>22 don't recall, but I don't believe there was.</p> <p>23 Q. It would have been to either you or</p> <p>24 Spencer?</p> <p>25 A. Yes.</p>
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<p>1 Q. Shareholders approve that?</p> <p>2 A. Formally, no.</p> <p>3 MR. SLEDZIK: Objection to the form.</p> <p>4 BY MR. FRITZ:</p> <p>5 Q. When you say "formally," did they</p> <p>6 approve it informally?</p> <p>7 A. Yeah. We all knew when we took money</p> <p>8 when there was an advance made.</p> <p>9 Q. When you say "we," who are you</p> <p>10 referring to?</p> <p>11 A. Spencer, myself, and by this time in</p> <p>12 2004, I may have mentioned it to my mother. At</p> <p>13 this point she began to get ill, and I can't tell</p> <p>14 you whether I did or not. I can't recall.</p> <p>15 Q. Did your mother ever affirmatively,</p> <p>16 whether in writing or orally, ever approve</p> <p>17 advances to BOC's officers?</p> <p>18 A. Yes.</p> <p>19 Q. When did that occur?</p> <p>20 A. Mostly in the '90s, early 2000s.</p> <p>21 Q. Did she do that in writing?</p> <p>22 A. No.</p> <p>23 Q. How did she convey that to you?</p> <p>24 A. I would just talk to her and tell her</p> <p>25 what's going on.</p>	<p>1 Q. What did she say, if anything?</p> <p>2 A. I don't recall.</p> <p>3 Q. Is it fair to say whatever you</p> <p>4 recommended to her she would approve?</p> <p>5 A. Probably.</p> <p>6 Q. Has she ever been -- is she a</p> <p>7 shareholder in any other closed corporations?</p> <p>8 A. No.</p> <p>9 Q. Is she on the board of directors of</p> <p>10 any corporation?</p> <p>11 A. No.</p> <p>12 Q. Is she an officer of any corporation?</p> <p>13 A. No.</p> <p>14 Q. Has she ever been?</p> <p>15 A. Outside of -- no. To my knowledge,</p> <p>16 no.</p> <p>17 Q. Does she have any experience managing</p> <p>18 corporations?</p> <p>19 A. Yes. She was in her day a very good</p> <p>20 business woman.</p> <p>21 Q. Do you mind telling me her background?</p> <p>22 A. Real estate business, development,</p> <p>23 management. That was most of it.</p> <p>24 Q. So she's a sophisticated business</p> <p>25 woman?</p>

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<p>1 A. She was.</p> <p>2 Q. You say "was." When do you think her</p> <p>3 mental abilities started to deteriorate?</p> <p>4 A. In the last five years.</p> <p>5 Q. So approximately 2002 to the present?</p> <p>6 A. Yeah.</p> <p>7 Q. The corporate purpose, if any, of that</p> <p>8 loan of approximately 42,000, do you know what it</p> <p>9 was?</p> <p>10 A. There wasn't a loan. It couldn't have</p> <p>11 been a loan of 42,000, because some percentage of</p> <p>12 that had to be interest. I would say it looks</p> <p>13 like there may have been a \$20,000 advance. I</p> <p>14 don't know, sitting here today.</p> <p>15 Q. You don't know what the corporate</p> <p>16 purpose was?</p> <p>17 A. No.</p> <p>18 Q. Other than to pay you salary, do you</p> <p>19 recall any other corporate purpose for any other</p> <p>20 loans to officers?</p> <p>21 MR. SLEDZIK: Objection to the form.</p> <p>22 BY MR. FRITZ:</p> <p>23 Q. Other than to pay you a salary, which</p> <p>24 you had testified earlier was one of the</p> <p>25 corporate purposes of these loans, are there any</p>	<p>1 other --</p> <p>2 A. No, I don't think that I said that.</p> <p>3 MR. SLEDZIK: Objection to the form.</p> <p>4 A. I said they couldn't pay me a salary</p> <p>5 and they loaned me the money because I wasn't</p> <p>6 going to take a salary to have to put the money</p> <p>7 back in after-tax dollars. So, I'm always</p> <p>8 available to put the money back, as I do whenever</p> <p>9 it's necessary.</p> <p>10 Q. Other than that, is there any other</p> <p>11 corporate purpose?</p> <p>12 A. No.</p> <p>13 Q. In 2004, did BOC pay any dividends to</p> <p>14 shareholders?</p> <p>15 A. No.</p> <p>16 Q. What was the net income of Blimpie of</p> <p>17 California in 2004?</p> <p>18 A. \$150,000.</p> <p>19 Q. Was that money reinvested in the</p> <p>20 corporation?</p> <p>21 A. Yes. By "reinvested," do you mean</p> <p>22 does it stay in the corporation?</p> <p>23 Q. Yes.</p> <p>24 A. Yes.</p> <p>25 Q. Did you ever consider paying back some</p>
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<p>1 of the loans that were made to you so that the</p> <p>2 stockholders could receive dividends?</p> <p>3 A. The two don't go together. You keep</p> <p>4 trying to link the two. The two definitely don't</p> <p>5 go together. The fact that I might pay back the</p> <p>6 money would not change the net worth of the</p> <p>7 company because everything is already on the</p> <p>8 books. It would not change the net worth of the</p> <p>9 company, the equity. So, no, it would not change</p> <p>10 it.</p> <p>11 Q. Let's go to 2005. Would you agree</p> <p>12 that it appears that approximately \$4,000 was</p> <p>13 advanced to officers in between year-end 2004 and</p> <p>14 2005?</p> <p>15 A. No. That would obviously be some</p> <p>16 insurance and pay downs.</p> <p>17 Q. Do you know by whom the pay downs were</p> <p>18 made?</p> <p>19 A. I would presume me.</p> <p>20 Q. Do you know how you paid it down?</p> <p>21 A. By check.</p> <p>22 Q. Not deferral salary or bonus?</p> <p>23 A. No.</p> <p>24 Q. At what point did you receive power of</p> <p>25 attorney from your mother? Was it approximately</p>	<p>1 August of 2005? Did she grant you the power of</p> <p>2 attorney?</p> <p>3 A. I gave you the document. I don't</p> <p>4 recall sitting here.</p> <p>5 Q. Going back to 2001.</p> <p>6 MR. SLEDZIK: That's the first?</p> <p>7 MR. FRITZ: Right.</p> <p>8 Q. Do you see where 210,000 was advanced</p> <p>9 to affiliates in 2001?</p> <p>10 A. No. I see where the sum total on the</p> <p>11 balance sheet was 210. That doesn't necessitate</p> <p>12 the fact it was advanced in that year at all.</p> <p>13 Q. Right. It could have stayed on the</p> <p>14 books?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know who those affiliates are?</p> <p>17 A. Ninety percent, as I recall it, was</p> <p>18 BLC #4 Corp.</p> <p>19 MR. SLEDZIK: Say that again.</p> <p>20 THE WITNESS: Best of my recollection,</p> <p>21 90 percent of that number would be BLC #4</p> <p>22 Corp., a subsidiary of Blimpie of</p> <p>23 California.</p> <p>24 BY MR. FRITZ:</p> <p>25 Q. What was the purpose of that</p>

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<p>1 subsidiary?</p> <p>2 A. That was a leasing subsidiary. We</p> <p>3 used those because most of the leases in Blimpie</p> <p>4 world, the master lease goes in the name of the</p> <p>5 leasing subsidiary and then is subleased to the</p> <p>6 franchisee.</p> <p>7 Q. Is BLC #4 wholly owned by BOC?</p> <p>8 A. It is.</p> <p>9 Q. So the purpose of that advance was?</p> <p>10 A. To the best of my recollection, that</p> <p>11 had to do with the Anto, Inc. lawsuit.</p> <p>12 Q. Can you explain that?</p> <p>13 A. Yes. We paid off Anto, Inc. through</p> <p>14 BLC #4.</p> <p>15 Q. Why didn't you pay it off through BOC?</p> <p>16 A. Because when we settled the case, if I</p> <p>17 remember correctly, when the case was settled,</p> <p>18 BLC #4 was the prime tenant on the lease at the</p> <p>19 Home Depot, and they were, I think, involved in</p> <p>20 the lawsuit, among others, BOC, BLC #4. So the</p> <p>21 attorneys said do it through BLC #4, and so I</p> <p>22 did.</p> <p>23 Q. Are there any other affiliates --</p> <p>24 MR. SLEDZIK: Can I interject this one</p> <p>25 thing?</p>	<p>1 Your communications with counsel are</p> <p>2 privilege. So, to the extent your answering</p> <p>3 his question may require you to convey</p> <p>4 advice that's been given to you by other</p> <p>5 attorneys or something you've conveyed to</p> <p>6 the attorney for the purpose of soliciting</p> <p>7 advice, you should indicate that. And that</p> <p>8 would be privileged. You're the client.</p> <p>9 You have to the ability to waive privilege,</p> <p>10 and I instruct you of that.</p> <p>11 BY MR. FRITZ:</p> <p>12 Q. Do you have documents pertaining to</p> <p>13 those advances to the affiliate? Does BLC</p> <p>14 maintain documents in its office here in New</p> <p>15 York?</p> <p>16 A. Yes. As far back as I have. I'd have</p> <p>17 to check.</p> <p>18 Q. On page 8, note C at the bottom, it</p> <p>19 states that "Advances to affiliates with common</p> <p>20 ownership of working capital purposes totaled</p> <p>21 210,000 and change for 2002 and 2001."</p> <p>22 Which affiliate with common ownership</p> <p>23 is that note referring to?</p> <p>24 MR. SLEDZIK: You are on the wrong</p> <p>25 page.</p>
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<p>1 Q. (Indicating).</p> <p>2 A. I don't know.</p> <p>3 Q. Has BOC ever advanced any money to any</p> <p>4 other affiliate other than BLC #4?</p> <p>5 A. Probably.</p> <p>6 Q. What entities would those be?</p> <p>7 A. I don't recall.</p> <p>8 Q. But it would be an entity that is</p> <p>9 owned at least in part by Belle or Miss Gillette,</p> <p>10 correct?</p> <p>11 MR. SLEDZIK: Object to the form.</p> <p>12 A. I don't recall. I can't give you the</p> <p>13 answer since I don't recall. I'd have to look at</p> <p>14 a spread sheet and see, then I could answer the</p> <p>15 question.</p> <p>16 Q. The reason why I mentioned Belle and</p> <p>17 Miss Gillette is because it says "advances to</p> <p>18 affiliates with common ownership." You don't own</p> <p>19 any part of Blimpie of California?</p> <p>20 A. That's correct.</p> <p>21 Q. So according to this, any advance to</p> <p>22 an affiliate would have to be to an entity that</p> <p>23 was owned by Ms. Gillette or your mother?</p> <p>24 A. I don't know. We had another</p> <p>25 company --</p>	<p>1 MR. SLEDZIK: Object to form.</p> <p>2 A. We had a company called J.P. Cools</p> <p>3 that we formed. We put money into that company.</p> <p>4 It was owned by the same people.</p> <p>5 Q. Who is we?</p> <p>6 A. Blimpie of California put money into</p> <p>7 that company. We started up that company.</p> <p>8 Q. What was the purpose of that company?</p> <p>9 A. We started up an ice cream and</p> <p>10 smoothie company. Same ownership, Spencer, me</p> <p>11 and my mother.</p> <p>12 Q. Any other entities?</p> <p>13 A. I don't recall.</p> <p>14 Q. Is that entity still in business</p> <p>15 today?</p> <p>16 A. No. I think there's one unit out</p> <p>17 there, but it's no longer active.</p> <p>18 Q. Would Blimpie of California have</p> <p>19 documents reflecting this common ownership?</p> <p>20 A. I'd have to check. It goes back quite</p> <p>21 a few years.</p> <p>22 Q. The benefit to Blimpie of advancing</p> <p>23 money to that entity, what was the corporate</p> <p>24 benefit --</p> <p>25 A. We were trying -- we were trying to do</p>

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<p>1 a multi-unit operation. We thought it would help</p> <p>2 Blimpie in terms of selling franchises, offering</p> <p>3 another concept, the real estate stake is</p> <p>4 improved. If you can take bigger real estate,</p> <p>5 the two incomes from two different operations,</p> <p>6 you might be able to get yourself to afford</p> <p>7 better real estate. So there are a lot of</p> <p>8 advantages.</p> <p>9 Q. Did it achieve those goals?</p> <p>10 A. In some cases initially it did. The</p> <p>11 one unit we have does very well.</p> <p>12 Q. At some point, did that change?</p> <p>13 A. We didn't follow up on it when</p> <p>14 Ms. Gillette and I moved to Atlanta.</p> <p>15 Q. Going back to Page 2, where it says</p> <p>16 "accounts payable on accrued expenses," for 2001,</p> <p>17 approximately 242,000, do any of those</p> <p>18 expenses --</p> <p>19 A. Yes.</p> <p>20 Q. Do any of those expenses include</p> <p>21 payment of your personal expenses?</p> <p>22 A. I don't recall.</p> <p>23 Q. Would you have records reflecting</p> <p>24 that?</p> <p>25 A. I'm sure.</p>	<p>1 Q. Has Blimpie of California ever paid a</p> <p>2 personal expense for you?</p> <p>3 A. Yes.</p> <p>4 MR. SLEDZIK: Object to the form.</p> <p>5 Q. What type?</p> <p>6 A. Medical.</p> <p>7 Q. Do you know how much those expenses</p> <p>8 have totaled?</p> <p>9 A. No, I don't.</p> <p>10 MR. SLEDZIK: Object to the form.</p> <p>11 BY MR. FRITZ:</p> <p>12 Q. When is the first time that Blimpie of</p> <p>13 California began paying your personal expenses?</p> <p>14 A. My medical expense?</p> <p>15 Q. Sure.</p> <p>16 A. I don't recall.</p> <p>17 Q. That's the only personal expense?</p> <p>18 A. To the best of my recollection, that's</p> <p>19 the only expense that they pay.</p> <p>20 Q. Was there any corporate purpose for</p> <p>21 them doing that?</p> <p>22 A. Yes.</p> <p>23 Q. What is that?</p> <p>24 A. I'm the president of the company.</p> <p>25 They weren't paying me a salary. I wanted them</p>
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<p>1 to pay, so they were paying my insured medical</p> <p>2 expenses.</p> <p>3 Q. Were they paying your insurance</p> <p>4 premiums?</p> <p>5 A. No -- well, back in the '90s, they</p> <p>6 were.</p> <p>7 Q. Did that change at some point?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know why?</p> <p>10 A. When I became CEO of Blimpie</p> <p>11 International, they paid it.</p> <p>12 Q. Does Blimpie International still pay</p> <p>13 it?</p> <p>14 A. X2Y1 pays it, I believe.</p> <p>15 Q. X2Y1 pays the premiums for your</p> <p>16 insurance?</p> <p>17 A. My medical insurance. We have a</p> <p>18 medical insurance for everybody. Yes, I'm part</p> <p>19 of the program.</p> <p>20 Q. Do you know if they pay any part of</p> <p>21 Spencer Gillette's medical insurance?</p> <p>22 A. Today?</p> <p>23 MR. SLEDZIK: Presently?</p> <p>24 MR. FRITZ: Yes.</p> <p>25 MR. SLEDZIK: X2Y1?</p>	<p>1 MR. FRITZ: Yes.</p> <p>2 A. No.</p> <p>3 BY MR. FRITZ:</p> <p>4 Q. And X2Y1 doesn't pay any dividends?</p> <p>5 A. They don't any pay dividends.</p> <p>6 Q. Period?</p> <p>7 A. Period.</p> <p>8 Q. Did there come a time when you either</p> <p>9 personally or through an entity purchased</p> <p>10 majority interest in Blimpie International?</p> <p>11 A. Me and others.</p> <p>12 MR. SLEDZIK: He's asking through an</p> <p>13 entity?</p> <p>14 A. Yes, through an entity.</p> <p>15 BY MR. FRITZ:</p> <p>16 Q. What entity was that?</p> <p>17 A. X2Y1.</p> <p>18 Q. Is Belle Endervelt a shareholder of</p> <p>19 X2Y1?</p> <p>20 A. No.</p> <p>21 Q. Looking at note G, the last page, it</p> <p>22 says "Effective January 24, 2002, the company's</p> <p>23 principal shareholder purchased a majority</p> <p>24 interest in Blimpie International, Inc."</p> <p>25 Who was BOC's principal shareholder in</p>

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<p>1 2002?</p> <p>2 A. The principal shareholder was Belle.</p> <p>3 Q. But she never purchased a majority</p> <p>4 interest in Blimpie International?</p> <p>5 A. That's correct.</p> <p>6 Q. So this statement is incorrect?</p> <p>7 A. That is definitely incorrect.</p> <p>8 Q. If you could go to page 5. In the</p> <p>9 middle of the page under "Cash Flows from</p> <p>10 Investing Activities," do you see where it says</p> <p>11 "Advances to Affiliates" four lines down?</p> <p>12 A. Yes.</p> <p>13 Q. And in 2002, it appears that BOC was</p> <p>14 paid back \$60,000 approximately?</p> <p>15 A. Yes.</p> <p>16 Q. So am I correct they paid that money</p> <p>17 back to BOC?</p> <p>18 A. That's what it looks like.</p> <p>19 Q. Going to Page 2, do you know why the</p> <p>20 advances to affiliates stayed the same between</p> <p>21 2001 and 2002?</p> <p>22 A. No, I don't.</p> <p>23 Q. Do you see where the advances to</p> <p>24 officers changed by the exact number that is</p> <p>25 referenced under "Advances to Affiliates" on the</p>	<p>1 fifth page, that we just looked at?</p> <p>2 A. Yes.</p> <p>3 Q. Why is that?</p> <p>4 A. I have no idea.</p> <p>5 Q. You don't know why?</p> <p>6 A. No.</p> <p>7 Q. Would it be fair to say these</p> <p>8 financial statements are not 100 percent</p> <p>9 accurate?</p> <p>10 A. I can't say that. I would have to go</p> <p>11 find the backup and understand it.</p> <p>12 Q. Do you have the backup?</p> <p>13 A. I would think we probably do.</p> <p>14 Q. But just looking at it, as we sit here</p> <p>15 today, do you think there's something wrong with</p> <p>16 these statements, that they are not 100 percent</p> <p>17 accurate?</p> <p>18 A. I wouldn't hypothesize until I see the</p> <p>19 backup.</p> <p>20 Q. How many franchises did Blimpie</p> <p>21 receive revenue from in 2002?</p> <p>22 A. I don't recall.</p> <p>23 Q. Turn to page 8.</p> <p>24 A. Same statement?</p> <p>25 Q. Yes.</p>
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<p>1 Looking at "Franchise Ownership</p> <p>2 Changes," does that refresh your recollection?</p> <p>3 A. Yes.</p> <p>4 Q. Was it 47 franchises?</p> <p>5 A. Forty-seven.</p> <p>6 Q. In that year, 2002, the accounts</p> <p>7 payable on accrued expenses was approximately</p> <p>8 \$167,000, Page 2?</p> <p>9 A. Yes.</p> <p>10 Q. If we could skip now to 2006.</p> <p>11 A. Yes.</p> <p>12 Q. If you could turn to Page 6. Do you</p> <p>13 see where it says that the number of franchises</p> <p>14 in operations is 28?</p> <p>15 A. No -- yes, I'm sorry.</p> <p>16 Q. So, it's almost half the amount that</p> <p>17 it had in 2002, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know if the expenses increased</p> <p>20 from 2002 to 2006, the expenses of Blimpie</p> <p>21 California?</p> <p>22 A. Without looking, no, I don't.</p> <p>23 Q. If the number of franchises decreased,</p> <p>24 would there be any reason why the expenses should</p> <p>25 increase?</p>	<p>1 A. Yes.</p> <p>2 Q. Besides inflation?</p> <p>3 A. Yes, of course.</p> <p>4 Q. What are those?</p> <p>5 A. We tried to build the company up, so</p> <p>6 we probably did a lot more advertising and we did</p> <p>7 other things that we think are necessary to build</p> <p>8 the company up.</p> <p>9 Q. Would it include additional payment of</p> <p>10 your personal expenses, meaning medical expense?</p> <p>11 A. In 2006 --</p> <p>12 MR. SLEDZIK: Objection to the form.</p> <p>13 A. If there was anything, it was minimal.</p> <p>14 BY MR. FRITZ:</p> <p>15 Q. We spoke earlier about the shareholder</p> <p>16 meeting that took place in October of 2007. Do</p> <p>17 you recall that shareholders' meeting?</p> <p>18 A. I do.</p> <p>19 (Whereupon, Plaintiff's Exhibit 2,</p> <p>20 shareholders' meeting notice, was marked for</p> <p>21 identification as of today's date.)</p> <p>22 MR. SLEDZIK: How many pages do you</p> <p>23 have in the exhibit?</p> <p>24 MR. FRITZ: Thirteen.</p> <p>25 MR. SLEDZIK: It's essentially notices</p>

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<p>1 and other things from 2005 to the present.</p> <p>2 MR. FRITZ: That's correct.</p> <p>3 MR. SLEDZIK: And there are certified</p> <p>4 mail return receipts; there are some</p> <p>5 envelopes, faxes, and as well as fax</p> <p>6 transmittal sheets, and one e-mail.</p> <p>7 MR. FRITZ: That's correct.</p> <p>8 MR. SLEDZIK: And then a Federal</p> <p>9 Express form.</p> <p>10 MR. FRITZ: Yes.</p> <p>11 BY MR. FRITZ:</p> <p>12 Q. Have you reviewed the document?</p> <p>13 A. I just reviewed the top page.</p> <p>14 Q. Is that your signature at the bottom?</p> <p>15 A. Yes.</p> <p>16 Q. According to this notice, what was the</p> <p>17 purpose of the meeting to be held on October 8,</p> <p>18 2007?</p> <p>19 A. "Discussion of vote taken on whether</p> <p>20 to ratify the action by the board in extending</p> <p>21 certain loans to officers and affiliates between</p> <p>22 the years 1999 and 2007."</p> <p>23 Q. Did you reside over that shareholder</p> <p>24 meeting?</p> <p>25 A. I did.</p>	<p>1 Q. Did you call for a vote to approve all</p> <p>2 prior acts of Blimpie International?</p> <p>3 A. I did -- no, no. I did not.</p> <p>4 THE WITNESS: Can I have the question</p> <p>5 read back.</p> <p>6 (Record read.)</p> <p>7 A. Yes.</p> <p>8 BY MR. FRITZ:</p> <p>9 Q. Was that business specified in the</p> <p>10 notice?</p> <p>11 A. Not specifically, no.</p> <p>12 Q. When you say, "not specifically"?</p> <p>13 A. No, it's not mentioned.</p> <p>14 Q. In any manner?</p> <p>15 A. No.</p> <p>16 Q. Would you agree that that vote is</p> <p>17 invalid?</p> <p>18 A. No.</p> <p>19 Q. Why not?</p> <p>20 A. My attorney --</p> <p>21 MR. SLEDZIK: Wait a second. I want</p> <p>22 to object to the question before that that</p> <p>23 you just asked, the why not. I don't know</p> <p>24 which lawyer you're going to talk about.</p> <p>25 It's your privilege. If You want to waive,</p>
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<p>1 it go ahead.</p> <p>2 A. No, I don't want to waive it.</p> <p>3 MR. SLEDZIK: Upon advice of counsel.</p> <p>4 BY MR. FRITZ:</p> <p>5 Q. According to Blimpie of California's</p> <p>6 record, is the vote that approved all prior acts</p> <p>7 of Blimpie California a valid vote?</p> <p>8 MR. SLEDZIK: Can I have the record</p> <p>9 read back.</p> <p>10 (Record read.)</p> <p>11 MR. SLEDZIK: Objection to the form.</p> <p>12 A. Yes.</p> <p>13 BY MR. FRITZ:</p> <p>14 Q. What documentation did you provide to</p> <p>15 Ms. Gillette concerning all prior acts that were</p> <p>16 going to be voted on? What documentation did you</p> <p>17 provide to her before the meeting?</p> <p>18 A. Would you read back the final</p> <p>19 question? I thought I heard two questions.</p> <p>20 Q. Strike that.</p> <p>21 Before October 8, 2007, did you</p> <p>22 provide Ms. Gillette with all documentation</p> <p>23 concerning all of the acts, the approval of which</p> <p>24 would be sought at the shareholder meeting?</p> <p>25 MR. SLEDZIK: Object to the form.</p>	<p>1 A. I don't recall.</p> <p>2 BY MR. FRITZ:</p> <p>3 Q. Did you send her anything?</p> <p>4 A. I sent you something. I know that.</p> <p>5 Q. Was it all documentation concerning</p> <p>6 all acts of the corporation?</p> <p>7 A. Any act, no. It was not.</p> <p>8 Q. But the vote was held to approve any</p> <p>9 act of the corporation?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know if that is in compliance</p> <p>12 with the bylaws of the corporation?</p> <p>13 A. Again, I have to go on the advice of</p> <p>14 counsel.</p> <p>15 MR. SLEDZIK: Wait a second, he's</p> <p>16 asking whether you know. Do you know,</p> <p>17 independent of advice of counsel?</p> <p>18 A. No. Sitting here right now, I don't</p> <p>19 know one way or the other.</p> <p>20 Q. When was the last time you read the</p> <p>21 bylaws of the corporation?</p> <p>22 A. Oh, it probably has been a couple of</p> <p>23 years.</p> <p>24 (Whereupon, Plaintiff's Exhibit 3,</p> <p>25 bylaws, were marked for identification as of</p>

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<p>1 today's date.)</p> <p>2 BY MR. FRITZ:</p> <p>3 Q. If you didn't provide Ms. Gillette</p> <p>4 with all of the records of all of the acts of the</p> <p>5 corporation before the vote, how did you expect</p> <p>6 her to make an informed decision on how to vote?</p> <p>7 A. I can't answer that. Again, I was</p> <p>8 just responding to what my counsel advised me.</p> <p>9 Q. You're counsel advised you to hold a</p> <p>10 vote to approve all corporate acts, even though</p> <p>11 you haven't provided documentation about those</p> <p>12 acts to one of the shareholders?</p> <p>13 MR. SLEDZIK: You're asking him</p> <p>14 specifically what his lawyer told him.</p> <p>15 MR. FRITZ: He waived it. He told me</p> <p>16 that's what you told him.</p> <p>17 MR. SLEDZIK: You assume it's me,</p> <p>18 which is appreciated, but it's factually</p> <p>19 incorrect. He hasn't identified the counsel</p> <p>20 yet.</p> <p>21 MR. FRITZ: Whomever it was, he waived</p> <p>22 it.</p> <p>23 MR. SLEDZIK: Let me have the previous</p> <p>24 question and answer read back.</p> <p>25 (Record read.)</p>	<p>1 MR. SLEDZIK: He's not telling you</p> <p>2 what his counsel advised him.</p> <p>3 MR. FRITZ: He is. He is saying his</p> <p>4 counsel advised him to hold the vote</p> <p>5 nonetheless.</p> <p>6 MR. SLEDZIK: You asked him how can</p> <p>7 you do this without having any knowledge.</p> <p>8 He is saying he's responding to what counsel</p> <p>9 told him. He's not telling you what counsel</p> <p>10 told him. How can that be waiving privilege?</p> <p>11 MR. FRITZ: He's saying that counsel</p> <p>12 told him it would be kosher. So he did.</p> <p>13 BY MR. FRITZ:</p> <p>14 Q. Let's go back.</p> <p>15 The vote occurred, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Let's take a look at what's been</p> <p>18 marked as Plaintiff's Exhibit 3.</p> <p>19 MR. SLEDZIK: That's the bylaws.</p> <p>20 Q. If you could look at Page 3, section</p> <p>21 3, "Special Meetings." Please let me know after</p> <p>22 you've reviewed that.</p> <p>23 A. Okay. I read it.</p> <p>24 Q. Did the shareholder meeting on</p> <p>25 October 8, would you agree that was a special</p>
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<p>1 shareholder meeting?</p> <p>2 A. I couldn't agree one way or the other.</p> <p>3 I don't recall.</p> <p>4 Q. Does it state that it was an annual</p> <p>5 meeting?</p> <p>6 A. No. It doesn't say it was a special</p> <p>7 meeting either.</p> <p>8 Q. But it states it was to be held for</p> <p>9 the purpose of ratifying certain loans to</p> <p>10 officers and affiliates?</p> <p>11 A. That's correct.</p> <p>12 Q. After reviewing this provision in the</p> <p>13 bylaws, is it still your opinion that the vote to</p> <p>14 approve prior acts of the corporation was a</p> <p>15 validly held vote on October 8, 2007?</p> <p>16 A. Yes.</p> <p>17 Q. What is your basis for saying that</p> <p>18 other than what your counsel told you?</p> <p>19 A. That's my basis.</p> <p>20 Q. Do you see the last sentence that</p> <p>21 says, "In addition to the matters required by</p> <p>22 items A, and if applicable, C of the previous</p> <p>23 section, notice of any special meetings shall</p> <p>24 specify the general nature of the business to be</p> <p>25 transacted, and no other business may be</p>	<p>1 transacted at such meeting."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Is it still your testimony that</p> <p>5 despite the fact that the bylaws say that no</p> <p>6 other business may be transacted if it's not</p> <p>7 noticed, that it was still a valid vote?</p> <p>8 A. Yes.</p> <p>9 Q. Before the October 8, 2007 meeting,</p> <p>10 were the loans approved at any other prior</p> <p>11 shareholder meeting?</p> <p>12 A. Not to my recollection.</p> <p>13 Q. And was a vote held on October 8,</p> <p>14 2007?</p> <p>15 A. Yes.</p> <p>16 Q. And did the vote pass?</p> <p>17 A. Yes.</p> <p>18 Q. Did you count the votes of Belle</p> <p>19 Endervelt?</p> <p>20 A. Yes.</p> <p>21 Q. Was Ms. Endervelt present?</p> <p>22 A. No.</p> <p>23 Q. Who voted on her behalf?</p> <p>24 A. I did.</p> <p>25 Q. Does she render you the power of</p>

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<p>1 attorney?</p> <p>2 A. Correct.</p> <p>3 Q. Do you think there's a conflict of</p> <p>4 interest between you using the majority</p> <p>5 shareholders' vote, power of her vote, to approve</p> <p>6 loans to yourself?</p> <p>7 A. No --</p> <p>8 MR. SLEDZIK: Object to the form.</p> <p>9 A. No.</p> <p>10 Q. Given that under California law the</p> <p>11 votes of a shareholder are not to be counted when</p> <p>12 approving loans or advances to that shareholder</p> <p>13 in their capacity as director or an officer, do</p> <p>14 you that Belle's votes should have counted?</p> <p>15 MR. SLEDZIK: Object.</p> <p>16 A. Absolutely.</p> <p>17 BY MR. FRITZ:</p> <p>18 Q. Why do you think that?</p> <p>19 A. Because Belle wasn't approving loans</p> <p>20 to herself.</p> <p>21 Q. Do you provide Belle with any</p> <p>22 financial assistance?</p> <p>23 A. No.</p> <p>24 Q. You've never given her any money?</p> <p>25 A. Never financial assistance.</p>	<p>1 Q. I'm sorry?</p> <p>2 A. Never financial assistance.</p> <p>3 Q. Have you given her any money?</p> <p>4 A. Birthday presents. Money -- for what</p> <p>5 you're talking about, no.</p> <p>6 Q. When you say what I'm talking about,</p> <p>7 what do you mean?</p> <p>8 A. You're talking about did I ever give</p> <p>9 my mother financial assistance. In my entire</p> <p>10 life? I have no idea.</p> <p>11 Q. Since the time that Ms. Gillette was a</p> <p>12 shareholder, for argument's sake let's say 1998?</p> <p>13 A. Have I ever loaned my mother money?</p> <p>14 Possibly.</p> <p>15 Q. Has she paid it back?</p> <p>16 A. Absolutely.</p> <p>17 Q. To you personally?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever paid any expenses for</p> <p>20 her?</p> <p>21 A. My mom?</p> <p>22 Q. Maybe she has a healthcare aid?</p> <p>23 A. She has a healthcare aide.</p> <p>24 Q. Who pays for that?</p> <p>25 A. My mother.</p>
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<p>1 Q. Do you pay for any type of services</p> <p>2 that she receives?</p> <p>3 A. Thank God, my mother doesn't need that</p> <p>4 help.</p> <p>5 Q. Does she receive a dividend from</p> <p>6 Blimpie of California?</p> <p>7 A. No, she does not. She put money in,</p> <p>8 but no.</p> <p>9 Q. So can you explain how payment of</p> <p>10 Blimpie's money to you, approved for your power</p> <p>11 of attorney from the majority shareholder is fair</p> <p>12 to the corporation?</p> <p>13 MR. FRITZ: Objection to the form.</p> <p>14 A. I have a power of attorney. In that</p> <p>15 position, I represent my mother. I voted on</p> <p>16 behalf of my mother on any act -- it's her vote.</p> <p>17 I'm voting in her stead. She has given me that</p> <p>18 power.</p> <p>19 BY MR. FRITZ:</p> <p>20 Q. Do you think that is in the best</p> <p>21 interest of the corporation?</p> <p>22 A. Absolutely --</p> <p>23 MR. SLEDZIK: Do you think what is in</p> <p>24 the best interest? I think the question is</p> <p>25 vague. I didn't know what "what" is.</p>	<p>1 BY MR. FRITZ:</p> <p>2 Q. Do you think it's fair to the</p> <p>3 corporation to use your power of attorney over</p> <p>4 the majority shareholders to approve loans to</p> <p>5 yourself?</p> <p>6 A. Yes.</p> <p>7 Q. Even though you don't pay any</p> <p>8 dividend, the corporation pays no dividend to</p> <p>9 Spencer Gillette?</p> <p>10 A. One has nothing to do -- you keep</p> <p>11 trying to twist things. One has nothing to do</p> <p>12 with the other.</p> <p>13 Q. I'm not trying to twist anything --</p> <p>14 A. Of course you are.</p> <p>15 Q. With respect to the vote to approve</p> <p>16 the loans to yourself, what documentation did you</p> <p>17 provide to the shareholders in advance?</p> <p>18 A. I don't know exactly --</p> <p>19 MR. SLEDZIK: On the record, we faxed</p> <p>20 you a spreadsheet I think on the 5th, which</p> <p>21 is a Friday, before I provided to you by fax</p> <p>22 with the cover letter. I know that the</p> <p>23 materials in Exhibit 2 make reference to a</p> <p>24 spreadsheet. I think you can concur it was</p> <p>25 attached to the documents.</p>

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<p>1 BY MR. FRITZ:</p> <p>2 Q. Besides the spreadsheet, did you</p> <p>3 provide anything else?</p> <p>4 A. Not to my recollection.</p> <p>5 Q. Do you think Spencer was entitled to</p> <p>6 have those records before she voted on whether to</p> <p>7 approve the loans or advances to you?</p> <p>8 MR. SLEDZIK: Objection to the form.</p> <p>9 A. Yes.</p> <p>10 BY MR. FRITZ:</p> <p>11 Q. But you didn't provide it to her?</p> <p>12 A. The loans? We did provide it to you.</p> <p>13 Q. Besides the spreadsheet, anything</p> <p>14 else?</p> <p>15 A. No.</p> <p>16 Q. Do you have any other documents</p> <p>17 regarding the loans exist?</p> <p>18 A. Can you be more specific.</p> <p>19 Q. Do any other records regarding the</p> <p>20 loans exist besides the spreadsheet and the</p> <p>21 reference to them on financial statements?</p> <p>22 A. Any documents that exist pertaining to</p> <p>23 the loans have been given to you, either in</p> <p>24 discovery or that spreadsheet.</p> <p>25 Q. Prior to the vote?</p>	<p>1 A. You were given the spreadsheet.</p> <p>2 Q. Were we given the ledgers and other</p> <p>3 information --</p> <p>4 A. No.</p> <p>5 Q. So is it fair to say that Spencer</p> <p>6 can't make a fully and fair decision on how to</p> <p>7 vote?</p> <p>8 A. No. You were offered the opportunity</p> <p>9 to look at the records. You chose not to accept</p> <p>10 that.</p> <p>11 Q. Are you referring to your offer to</p> <p>12 make some of the records available to --</p> <p>13 A. Not at all. You're twisting again. I</p> <p>14 offered to show all the records to you. You</p> <p>15 chose not to look at them.</p> <p>16 Q. Why don't we look at the notice of</p> <p>17 annual meeting of stockholders regarding the</p> <p>18 January 23, 2006 meeting. It's about the fifth</p> <p>19 page in.</p> <p>20 MR. SLEDZIK: On Exhibit 2?</p> <p>21 MR. FRITZ: Correct.</p> <p>22 A. Correct.</p> <p>23 Q. Do you recognize this document?</p> <p>24 A. I do.</p> <p>25 Q. Do you know if this document was sent</p>
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<p>1 to Ms. Gillette?</p> <p>2 A. I do.</p> <p>3 Q. Was it --</p> <p>4 A. I know it was sent, yes.</p> <p>5 Q. Do you know how it was sent to her?</p> <p>6 A. I believe -- no, registered mail or</p> <p>7 FedEx, I don't recall.</p> <p>8 Q. Looking at the next page, on the upper</p> <p>9 right-hand corner, it looks like it was mailed</p> <p>10 some point around December 18, 2006?</p> <p>11 A. Yes.</p> <p>12 Q. And at some point, Blimpie of</p> <p>13 California received this back from the postal</p> <p>14 service?</p> <p>15 A. Correct.</p> <p>16 Q. When you received it back, did you</p> <p>17 verify her address, Spencer's address?</p> <p>18 A. Did I personally? No, I personally</p> <p>19 did not.</p> <p>20 Q. Did anyone?</p> <p>21 A. Yes.</p> <p>22 Q. Who?</p> <p>23 A. Dora Ricci.</p> <p>24 Q. What steps, if any, did Ms. Ricci take</p> <p>25 at that point to notify Ms. Gillette of the</p>	<p>1 shareholders meeting?</p> <p>2 A. You can ask her, but I think she</p> <p>3 resent it, I believe.</p> <p>4 Q. Are there any documents in BOC's</p> <p>5 possession that would show that?</p> <p>6 A. I don't know offhand.</p> <p>7 Q. Besides from potentially what</p> <p>8 Ms. Ricci did, did you take any steps to notify</p> <p>9 Spencer?</p> <p>10 A. I don't recall whether I spoke to you</p> <p>11 or not at that time.</p> <p>12 Q. You're referring to me?</p> <p>13 A. Yeah, you. At some point, I know I</p> <p>14 had spoken to you, but I don't recall. I don't</p> <p>15 remember the date. I don't remember if it was in</p> <p>16 relation to this or something else. I don't</p> <p>17 recall.</p> <p>18 Q. Looking at what appears to be the</p> <p>19 third to the page -- before we get to that.</p> <p>20 You're not sure if you have any documentation</p> <p>21 showing the type of notice that Ms. Gillette</p> <p>22 would have received, you just think that</p> <p>23 Ms. Ricci notified her in some manner?</p> <p>24 A. Yeah, I don't know what occurred.</p> <p>25 Q. Looking at the letter dated June 17,</p>

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<p>1 2005 to you from Spencer, do you recognize this</p> <p>2 document?</p> <p>3 A. I've seen it before.</p> <p>4 Q. In the document, Ms. Gillette asks for</p> <p>5 copies of certain corporate records?</p> <p>6 A. Yes.</p> <p>7 Q. At the time she requested it, she was</p> <p>8 a shareholder, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Would you agree that as a shareholder,</p> <p>11 she has the right to inspect the books and</p> <p>12 records of the corporation?</p> <p>13 A. Yes.</p> <p>14 MR. SLEDZIK: Objection to the form.</p> <p>15 A. Yes.</p> <p>16 BY MR. FRITZ:</p> <p>17 Q. Did you ever respond to this letter?</p> <p>18 A. I don't remember. I just don't</p> <p>19 remember.</p> <p>20 Q. Why don't we look at two pages before</p> <p>21 that. This was a document produced by your</p> <p>22 counsel. Do you recognize this document?</p> <p>23 A. Not really.</p> <p>24 Q. Does it appear to be a memo from you</p> <p>25 to Ms. Gillette?</p>	<p>1 A. It does.</p> <p>2 Q. And the date is June 23, 2005?</p> <p>3 A. Correct.</p> <p>4 Q. Is that the date that this memo was</p> <p>5 sent? Do you recall?</p> <p>6 A. I don't recall.</p> <p>7 Q. Would you have sent it with a date --</p> <p>8 would you have sent it before this date?</p> <p>9 A. Probably not.</p> <p>10 Q. Do you recall the date of the</p> <p>11 shareholder meeting? You can look at the notice.</p> <p>12 It's the second to the last page.</p> <p>13 MR. SLEDZIK: (Indicating).</p> <p>14 A. Yes, I see. It's June 24, 2005.</p> <p>15 Q. So, the day before the meeting, is it</p> <p>16 fair to say then you informed Spencer that you</p> <p>17 are processing the information and will forward</p> <p>18 it to her?</p> <p>19 A. Well, her letter is dated June 17th. I</p> <p>20 don't know how she sent it, so obviously I didn't</p> <p>21 get it until sometime June 20th or later. So we</p> <p>22 responded on June 23rd.</p> <p>23 Q. Do you know if she emailed the</p> <p>24 document?</p> <p>25 A. I really don't.</p>
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<p>1 Q. You said you were in the process of</p> <p>2 gathering that information and would forward it</p> <p>3 to her as soon as possible. Did you ever do</p> <p>4 that?</p> <p>5 A. I don't recall.</p> <p>6 Q. Who at Blimpie California would know</p> <p>7 that information?</p> <p>8 A. I don't recall.</p> <p>9 Q. Who else handles requests for</p> <p>10 information from shareholders besides you?</p> <p>11 A. I would have put it together. There</p> <p>12 are no shareholder agreements. That's easy. The</p> <p>13 statements, I would be happy -- these things are</p> <p>14 so minor that we just would have put it together</p> <p>15 and sent it. I just don't remember.</p> <p>16 Q. Do you have a record of sending it to</p> <p>17 her?</p> <p>18 A. I don't know. I have not seen one,</p> <p>19 no.</p> <p>20 Q. Is it fair to say it does not exist?</p> <p>21 A. No, it's not.</p> <p>22 Q. You can check the records and</p> <p>23 determine if you actually sent her --</p> <p>24 A. I can try, yes.</p> <p>25 Q. Turning two pages a head of that, it</p>	<p>1 appears to be an e-mail from Ms. Ricci to</p> <p>2 Ms. Gillette --</p> <p>3 A. Yes.</p> <p>4 Q. -- which essentially includes the same</p> <p>5 language as your memo, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Did you instruct her to write this</p> <p>8 e-mail?</p> <p>9 A. I would assume so, only by looking at</p> <p>10 it. I don't have any independent recollection.</p> <p>11 MR. SLEDZIK: It's an e-mail to</p> <p>12 Mr. Endervelt.</p> <p>13 MR. FRITZ: And it addresses</p> <p>14 Ms. Gillette.</p> <p>15 MR. SLEDZIK: The address of the</p> <p>16 e-mail itself is to Mr. Endervelt.</p> <p>17 BY MR. FRITZ:</p> <p>18 Q. Do you see the e-mail is addressed to</p> <p>19 Miss Gillette, and it says, "We are in receipt of</p> <p>20 your request"?</p> <p>21 A. Yes.</p> <p>22 Q. So either Ms. Ricci inadvertently sent</p> <p>23 it to you or Ms. Gillette was CC'd in some</p> <p>24 fashion; is that fair?</p> <p>25 A. No.</p>

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<p>1 MR. SLEDZIK: Object --</p> <p>2 Q. Why not?</p> <p>3 A. It could have been as simple as I had</p> <p>4 dictated something to Dora, I was in a hurry and</p> <p>5 shut it down, and I said I was in a hurry, just</p> <p>6 send it over to me and I'll get it out. I don't</p> <p>7 know.</p> <p>8 Q. Did Ms. Gillette ever come to the</p> <p>9 office to inspect the records pursuant to her</p> <p>10 request in 2005?</p> <p>11 A. No.</p> <p>12 Q. Did you ever advise her that she could</p> <p>13 do that?</p> <p>14 A. I never spoke to her.</p> <p>15 Q. Your answer is no?</p> <p>16 A. No.</p> <p>17 Q. Am I correct that your answer is no?</p> <p>18 A. My answer is no.</p> <p>19 Q. Why did you not offer her the</p> <p>20 opportunity to come to the office to review the</p> <p>21 book and records?</p> <p>22 A. To my understanding, she lived in</p> <p>23 Henderson, Nevada. If anything, I would send it</p> <p>24 her because it wouldn't make sense to say Come</p> <p>25 all the way to New York to look at it.</p>	<p>1 Q. Did she tell you that she wouldn't fly</p> <p>2 to New York --</p> <p>3 A. No, she didn't. It was just a</p> <p>4 courtesy.</p> <p>5 Q. To her?</p> <p>6 A. Yeah.</p> <p>7 Q. If she had told you that she will come</p> <p>8 to New Rochelle to inspect the records, would you</p> <p>9 have permitted her to?</p> <p>10 A. Absolutely --</p> <p>11 MR. SLEDZIK: Objection.</p> <p>12 Q. Other than these shareholders meetings</p> <p>13 that we've discussed, what other shareholder</p> <p>14 meetings have been held since 1999?</p> <p>15 A. Ninety-nine?</p> <p>16 Q. Yes.</p> <p>17 A. I don't recall off hand.</p> <p>18 Q. Have other meetings been held?</p> <p>19 A. I don't know.</p> <p>20 Q. How many?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you have minutes from those</p> <p>23 meetings?</p> <p>24 A. I don't know if I have them in this</p> <p>25 office or not.</p>
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<p>1 Q. Has there ever been a situation where</p> <p>2 the shareholder meeting was held, but the minutes</p> <p>3 weren't recorded?</p> <p>4 A. Yes.</p> <p>5 Q. When did that occur?</p> <p>6 A. This last meeting, because I haven't</p> <p>7 gotten it back from the stenographer yet.</p> <p>8 Q. I have a copy.</p> <p>9 MR. SLEDZIK: This counsel has a copy</p> <p>10 of it.</p> <p>11 BY MR. FRITZ:</p> <p>12 Q. I'm sorry. So aside from the</p> <p>13 October 2007 meeting, are there any other</p> <p>14 shareholder meetings that were held at which</p> <p>15 minutes were not recorded?</p> <p>16 A. No.</p> <p>17 Q. So somewhere in BOC's records should</p> <p>18 be minutes of every shareholder meeting that has</p> <p>19 been held?</p> <p>20 A. I would hope so, yes.</p> <p>21 Q. Do you know if Spencer received</p> <p>22 notices of all of those meetings?</p> <p>23 A. Formally or informally?</p> <p>24 MR. SLEDZIK: Of all those meetings?</p> <p>25 Do it by time frame in terms of the</p>	<p>1 question.</p> <p>2 BY MR. FRITZ:</p> <p>3 Q. Besides from the October 2007 meeting,</p> <p>4 the January 2006 meeting, which notice for which</p> <p>5 was returned, and you believed that someone may</p> <p>6 have advised Spencer of, and this May --</p> <p>7 June 2005 meeting, did Spencer receive written</p> <p>8 notice of any other meeting of the shareholders?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Were other shareholder meetings held?</p> <p>11 A. Yes.</p> <p>12 Q. Was she informed in a manner other</p> <p>13 than a written notice?</p> <p>14 A. Yes.</p> <p>15 Q. How?</p> <p>16 A. Verbally.</p> <p>17 Q. Did she attend those meetings?</p> <p>18 A. To the best of my recollection, yes.</p> <p>19 Q. All of them?</p> <p>20 A. To the best of my recollection, yes.</p> <p>21 Q. Do you recall what business was</p> <p>22 conducted at such meetings?</p> <p>23 A. No.</p> <p>24 Q. Do you have the proxy forms that</p> <p>25 Ms. Endervelt filled out so you could vote on her</p>

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<p>1 behal f?</p> <p>2 A. I have the last one before I had the</p> <p>3 power of attorney.</p> <p>4 Q. Any others?</p> <p>5 A. I don't know if I have the records any</p> <p>6 more.</p> <p>7 Q. But you can check?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever sign any Blimpie of</p> <p>10 California documents on Spencer's behalf?</p> <p>11 A. No. Sign her name?</p> <p>12 Q. Yes.</p> <p>13 A. Never.</p> <p>14 Q. That would include financial opinions</p> <p>15 on the value of Blimpie of California?</p> <p>16 A. You'll have to be more clearer than</p> <p>17 that.</p> <p>18 Q. Have you ever signed her name to</p> <p>19 anything?</p> <p>20 A. No.</p> <p>21 Q. And that includes --</p> <p>22 MR. SLEDZIK: "Anything" would be</p> <p>23 everything.</p> <p>24 MR. FRITZ: Maybe I may refresh his</p> <p>25 recollection.</p>	<p>1 Q. Are you familiar with an entity called</p> <p>2 Provident Capital?</p> <p>3 A. Yes.</p> <p>4 Q. What is that?</p> <p>5 A. Provident Capital was the bank that</p> <p>6 loaned us money for the transaction to buy</p> <p>7 Blimpie International.</p> <p>8 Q. What type of documents did they</p> <p>9 demand, if any, from Blimpie of California in</p> <p>10 exchange for that loan? What documents did they</p> <p>11 demand in connection with that loan?</p> <p>12 A. There's two different questions.</p> <p>13 MR. SLEDZIK: It's a different</p> <p>14 question.</p> <p>15 BY MR. FRITZ:</p> <p>16 Q. Let's start with the first one.</p> <p>17 (Record read.)</p> <p>18 A. The only one that I remember, sitting</p> <p>19 here right now, was the resignations.</p> <p>20 Q. Did they require any financial</p> <p>21 documents from Blimpie of California?</p> <p>22 A. I don't recall.</p> <p>23 Q. Would you have records showing that?</p> <p>24 A. I don't know.</p> <p>25 (Whereupon, Plaintiff's Exhibit 4,</p>
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<p>1 minutes of meeting, was marked for</p> <p>2 identification as of today's date.)</p> <p>3 BY MR. FRITZ:</p> <p>4 Q. If you can turn to the second page,</p> <p>5 the board of directors meeting minutes of</p> <p>6 February 13, 2007. Do you recognize that</p> <p>7 document?</p> <p>8 A. I do.</p> <p>9 MR. SLEDZIK: Can we have this</p> <p>10 described in some way. It seems to be</p> <p>11 minutes of -- I note the witness stepped out</p> <p>12 for a moment.</p> <p>13 This is the minutes of the meetings of</p> <p>14 the stockholders and directors from</p> <p>15 June 2005 to February 3, 2007. It's --</p> <p>16 there is one, minutes of the stockholder</p> <p>17 meeting dated December 13, 2007; one,</p> <p>18 minutes of the board of directors meeting</p> <p>19 with that same date; minutes of the</p> <p>20 stockholders meeting dated June 2, 2006;</p> <p>21 minutes of the board of directors meeting</p> <p>22 dated June 2, 2006; minutes of the board of</p> <p>23 directors meeting dated June 24, 2005 and</p> <p>24 minutes of a shareholders meeting dated that</p> <p>25 same day -- stockholders meeting. I</p>	<p>1 misspoke.</p> <p>2 Q. At this board meeting held on February</p> <p>3 13, 2007, did the board approve Blimpie's payment</p> <p>4 of \$12,000 per month to X2Y1?</p> <p>5 A. Yes.</p> <p>6 Q. And you are the majority shareholder</p> <p>7 of that entity, X2Y1?</p> <p>8 A. Yes.</p> <p>9 Q. How does Blimpie of California benefit</p> <p>10 from paying X2Y1 \$12,000 --</p> <p>11 A. Because it gets the use of all of the</p> <p>12 people on this list, and gets the use of an</p> <p>13 office, gets the use of all of -- of a whole</p> <p>14 operation, and it's contributing just a portion</p> <p>15 of that money. It sharing. We're just sharing</p> <p>16 expenses. It shares this. This is the minority</p> <p>17 portion of expenses obviously.</p> <p>18 Q. Has X2Y1 ever paid you income?</p> <p>19 MR. SLEDZIK: Object to the form.</p> <p>20 A. I don't believe X2Y1 has ever paid me?</p> <p>21 Q. Would you have records showing if it</p> <p>22 did?</p> <p>23 A. Yeah. They had loans from me.</p> <p>24 Q. X2Y1 loaned you money?</p> <p>25 A. No, I loaned it.</p>

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<p>1 Q. How much did you loan them?</p> <p>2 A. I don't remember.</p> <p>3 Q. So the benefit to Blimpie of</p> <p>4 California is that in exchange for paying X2Y1</p> <p>5 \$12,000, it gets to share the resources, whether</p> <p>6 human or otherwise of X2Y1?</p> <p>7 A. Correct.</p> <p>8 Q. Why is that necessary?</p> <p>9 A. Why?</p> <p>10 MR. SLEDZIK: Object to the form.</p> <p>11 A. Well, as an example, I consider Alonzo</p> <p>12 Botta, the vice president of franchise</p> <p>13 development, one of the most competent franchise</p> <p>14 sales guys in America. Blimpie of California no</p> <p>15 way could afford him by itself. I consider Mark</p> <p>16 Gelish (phonetic) one of the best menu and</p> <p>17 operations and training guys. Blimpie of</p> <p>18 California could not afford him.</p> <p>19 There are secretarial and work to be</p> <p>20 done administrative. Blimpie of California would</p> <p>21 have to hire its own people. It can't afford to</p> <p>22 do that. It's a small company. So it gets to</p> <p>23 share with everybody else and it benefits</p> <p>24 immensely from this.</p> <p>25 Q. Was Blimpie of California able to</p>	<p>1 conduct its operation before this arrangement</p> <p>2 with X2Y1 took place?</p> <p>3 A. It did.</p> <p>4 Q. But not to your satisfaction?</p> <p>5 A. Well, but it had an office. It paid</p> <p>6 rent. It had a secretary. It paid the</p> <p>7 secretary. It had -- those are the things -- it</p> <p>8 had office expenses. So now it's paying less of</p> <p>9 the shares.</p> <p>10 Q. But the expenses of Blimpie of</p> <p>11 California are more now than they were before</p> <p>12 this arrangement?</p> <p>13 A. I'd have to go back and check, but</p> <p>14 I -- hopefully, we're a little bit up because</p> <p>15 we're trying to put things together to grow the</p> <p>16 brand.</p> <p>17 Q. What else are you doing to try to grow</p> <p>18 the brand besides this arrangement with X2Y1?</p> <p>19 A. We're selling more franchises. We got</p> <p>20 five restaurants opening in the next 90 days. We</p> <p>21 got another deal that is closing next week. So</p> <p>22 that's Mr. Botto. He's more than paid for his</p> <p>23 way. We put new products in.</p> <p>24 Smoothie Island, which is a subsidiary</p> <p>25 of X2Y1, we're allowing that to be used by</p>
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<p>1 Blimpie franchisees without charging them a</p> <p>2 license fee. So there are many benefits that</p> <p>3 Blimpie is getting to help it grow and become a</p> <p>4 sustainable company.</p> <p>5 Q. In the minutes, it refers to "a</p> <p>6 detailed copy of the expenses being shared be</p> <p>7 attached to these minutes." Do you have a copy</p> <p>8 of those detailed expenses?</p> <p>9 A. Sure.</p> <p>10 Q. Those are readily available in your</p> <p>11 office?</p> <p>12 A. They are.</p> <p>13 Q. Turning to the next page, it appears</p> <p>14 that the board voted to provide you with a</p> <p>15 \$50,000 bonus?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Who participated in that vote?</p> <p>18 A. Dora Ricci.</p> <p>19 Q. Is it fair to say that her employment</p> <p>20 is contingent on your approval?</p> <p>21 A. No.</p> <p>22 Q. Who else --</p> <p>23 A. It's highly twisting things.</p> <p>24 Q. Who else is involved in the decision</p> <p>25 to employ Ms. Ricci?</p>	<p>1 A. I am.</p> <p>2 Q. Anyone else?</p> <p>3 A. No.</p> <p>4 Q. So essentially, she votes to approve</p> <p>5 you a bonus and you pay her salary and make her a</p> <p>6 director and officer; is that fair?</p> <p>7 A. No, that's not fair. Come on. You're</p> <p>8 playing games.</p> <p>9 Q. I'm asking you a question.</p> <p>10 A. No, your innuendos and your twisting</p> <p>11 of the facts aren't quite the same.</p> <p>12 Q. Did you report that \$50,000 as income?</p> <p>13 A. I did.</p> <p>14 Q. What was the benefit to the</p> <p>15 corporation for that \$50,000?</p> <p>16 A. All the services that I provide. I'm</p> <p>17 tired of working for nothing.</p> <p>18 Q. And the reason why you couldn't just</p> <p>19 take a salary is what?</p> <p>20 A. The company didn't have it to give me.</p> <p>21 Q. Is that because they're sharing</p> <p>22 expenses with other entities and they're paying</p> <p>23 your medical expenses?</p> <p>24 A. No, that's not why.</p> <p>25 Q. Do you know what the reason is?</p>

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<p>1 A. Yes. We need to grow more. That's</p> <p>2 why I haven't been taking a salary, to try and</p> <p>3 use my time to help the company grow.</p> <p>4 Q. Was the growth of the company</p> <p>5 proceeding better, so to speak, when Spencer was</p> <p>6 there?</p> <p>7 A. No.</p> <p>8 Q. You're doing better now?</p> <p>9 A. Now, we're beginning to. Now, it's</p> <p>10 beginning to pay off. We had to change Blimpie.</p> <p>11 Q. Even though you lost franchises?</p> <p>12 A. Blimpie International across the</p> <p>13 country has half the franchises it's had. The</p> <p>14 brand had enormous problems.</p> <p>15 Q. Was Spencer paid any dividends in</p> <p>16 2006?</p> <p>17 A. No.</p> <p>18 Q. So if there was an extra \$50,000 paid</p> <p>19 to you as a bonus, do you in any way think it</p> <p>20 should have gone to Spencer or your mother as the</p> <p>21 shareholders?</p> <p>22 A. No.</p> <p>23 Q. Why not?</p> <p>24 A. Because I work.</p> <p>25 Q. Didn't Spencer work also?</p>	<p>1 A. No.</p> <p>2 Q. She never worked for Blimpie of</p> <p>3 California?</p> <p>4 A. Not in 2006.</p> <p>5 Q. But prior to that she did, right?</p> <p>6 A. Yes.</p> <p>7 Q. And you also received \$10,000 in 2005?</p> <p>8 A. Correct.</p> <p>9 Q. And the benefit to the corporation is</p> <p>10 the same according to you as the \$50,000 bonus</p> <p>11 that you got in --</p> <p>12 A. Yes.</p> <p>13 (Whereupon, Plaintiff's Exhibit 5,</p> <p>14 affidavit of witness, was marked for</p> <p>15 identification as of today's date.</p> <p>16 BY MR. FRITZ:</p> <p>17 Q. Do you recognize this document?</p> <p>18 A. Yes.</p> <p>19 MR. FRITZ: For the record, this is</p> <p>20 the affidavit of Jeffrey Endervelt dated</p> <p>21 July 31, 2007.</p> <p>22 MR. SLEDZIK: Notarized on the</p> <p>23 following day.</p> <p>24 MR. FRITZ: Notarized on the following</p> <p>25 day.</p>
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<p>1 BY MR. FRITZ:</p> <p>2 Q. Looking at paragraph six, do you see</p> <p>3 where you state that "anyone who received these</p> <p>4 advances is expected and legally obligated to</p> <p>5 repay these advances?</p> <p>6 A. Correct.</p> <p>7 Q. Does that include you?</p> <p>8 A. Yes, sir.</p> <p>9 Q. When do you expect to repay these</p> <p>10 advances, if ever?</p> <p>11 A. Oh, I expect to repay them as the</p> <p>12 company -- as I need to pay them. I'll be happy</p> <p>13 to repay them. I'll agree that if Ms. Gillette</p> <p>14 and I both put our money in now, they'll be</p> <p>15 repaid right now.</p> <p>16 Q. At what rate of interest?</p> <p>17 A. 6 percent, I think it is.</p> <p>18 Q. Would you pay that back in cash if and</p> <p>19 when you ever repaid it?</p> <p>20 A. As opposed to -- I don't understand</p> <p>21 your question.</p> <p>22 Q. In your affidavit, you refer to</p> <p>23 "deferring compensation," so --</p> <p>24 A. Depends on the circumstances at the</p> <p>25 time.</p>	<p>1 Q. So, if and when you pay it back, you</p> <p>2 wouldn't necessarily pay it back in cash?</p> <p>3 A. That's correct.</p> <p>4 Q. Why not?</p> <p>5 A. Well, because it would just be paying</p> <p>6 it back to pay it back. If I owe the company</p> <p>7 money, the company owes me money, I'll take it as</p> <p>8 income, but I may offset. They may not have the</p> <p>9 cash to pay me.</p> <p>10 Q. So, for instance, in the situation</p> <p>11 where Blimpie of California approves through the</p> <p>12 board of directors, meaning you or the</p> <p>13 shareholders, meaning your mother, approves a</p> <p>14 bonus to you, let's say a \$100,000, instead of</p> <p>15 paying back the advance in cash, you would just</p> <p>16 consider that you owe a \$100,000 less and pay</p> <p>17 back that advance? Is that what you mean by</p> <p>18 deferring compensation?</p> <p>19 A. Yes.</p> <p>20 Q. So, what would prevent you from</p> <p>21 approving loans to yourself for a million</p> <p>22 dollars, and that you have power of attorney over</p> <p>23 your mother, what would prevent you from</p> <p>24 authorizing payment of a bonus of a million</p> <p>25 dollars to yourself?</p>

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<p>1 A. Only one thing.</p> <p>2 Q. What?</p> <p>3 A. I would have to put the million</p> <p>4 dollars in.</p> <p>5 Q. Why is that?</p> <p>6 A. The company doesn't have it. And the</p> <p>7 only person that puts money into the company is</p> <p>8 me.</p> <p>9 Q. So, let's say the maximum that the</p> <p>10 company can afford, can't you take a loan to</p> <p>11 yourself for that amount, and then say that you</p> <p>12 pay it back through deferring compensation in the</p> <p>13 same amount?</p> <p>14 A. I haven't taken any money from this</p> <p>15 company in years, number one. Number two, I'm</p> <p>16 working. I expect to be paid. I'm not going to</p> <p>17 work for free anymore. I expect to be paid.</p> <p>18 Q. My question is whether that was</p> <p>19 possible.</p> <p>20 A. Is it possible? Anything is possible.</p> <p>21 Anything is possible.</p> <p>22 MR. SLEDZIK: He's answered your</p> <p>23 question.</p> <p>24 BY MR. FRITZ:</p> <p>25 Q. Would it be possible for you to pay</p>	<p>1 Spencer a million dollars in dividends?</p> <p>2 A. Sure, if I put the money in.</p> <p>3 Q. So you agree that it's possible for</p> <p>4 you to set the amount of loans that you take, and</p> <p>5 then only to pay it back by approving a salary or</p> <p>6 bonus to you?</p> <p>7 MR. SLEDZIK: Object to the form.</p> <p>8 A. It's obvious I already paid in cash</p> <p>9 \$22,000 a couple years ago.</p> <p>10 Q. But it's possible for you to do it by</p> <p>11 deferring compensation that you essentially</p> <p>12 approve for yourself; is that possible?</p> <p>13 A. Absolutely possible.</p> <p>14 Q. And the funds would still be in your</p> <p>15 pocket from the loans?</p> <p>16 A. No, I would be putting it back because</p> <p>17 the company would have to give me the money. If</p> <p>18 there's is a salary, the company has to pay me.</p> <p>19 The cash comes back to me. So if I turn around</p> <p>20 and hand it back to the company, it's the same</p> <p>21 thing. I'm entitled to a salary right,</p> <p>22 counselor?</p> <p>23 Q. I get to ask the questions.</p> <p>24 You're receiving compensation from</p> <p>25 KBI, aren't you?</p>
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<p>1 A. Yes, I have.</p> <p>2 Q. So, before, where you stated during</p> <p>3 the shareholder meeting that you don't work for</p> <p>4 free and that you needed these loans because you</p> <p>5 don't work for free, you do have another source</p> <p>6 of income don't you?</p> <p>7 A. Today, today. I didn't have it when I</p> <p>8 took those loans, by the way.</p> <p>9 Q. But now you do?</p> <p>10 A. And I don't take anything.</p> <p>11 Q. But you haven't repaid the loans.</p> <p>12 A. Haven't repaid the loan. Neither has</p> <p>13 your client.</p> <p>14 Q. But you could repay it since you</p> <p>15 received \$350,000 from KBI?</p> <p>16 A. I could.</p> <p>17 Q. Why haven't you?</p> <p>18 A. Until now, it's never come up.</p> <p>19 If the company needs the money, I put</p> <p>20 the money in. If I have to guaranty the</p> <p>21 signature for the lines of credit, I sign my name</p> <p>22 and guaranty the lines of credit so the company</p> <p>23 has money.</p> <p>24 Q. Do you think the company needs the</p> <p>25 money now?</p>	<p>1 A. Right now?</p> <p>2 Q. Yes.</p> <p>3 A. No. It may need it next year, but</p> <p>4 I'll have to put it in.</p> <p>5 Q. What about to pay Spencer dividends?</p> <p>6 A. Oh, please. You're being silly, you</p> <p>7 know a little bit about business, I assume.</p> <p>8 There is no way a company of this size is paying</p> <p>9 dividends, as much as you try and twist it.</p> <p>10 Q. Even though you get \$350,000 because a</p> <p>11 portion of the revenue of Blimpie of California</p> <p>12 is paid to Kahala and KBI?</p> <p>13 A. That is absurd. That is totally</p> <p>14 absurd.</p> <p>15 Q. I believe you also stated that in your</p> <p>16 affidavit that you needed these loans because you</p> <p>17 don't work for free essentially, right?</p> <p>18 MR. SLEDZIK: He's stated that here</p> <p>19 today.</p> <p>20 A. Yes.</p> <p>21 BY MR. FRITZ:</p> <p>22 Q. Have you considered resigning?</p> <p>23 A. No.</p> <p>24 Q. Why?</p> <p>25 A. Because I protect my mother's</p>

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<p>1 interests.</p> <p>2 Q. Whenever she is deceased, and I hope</p> <p>3 that's not anytime soon, what about then?</p> <p>4 A. No. Then I own the company.</p> <p>5 Q. And so, when you own the company, you</p> <p>6 won't be able to approve the loans to yourself</p> <p>7 any more, correct? If you're the majority</p> <p>8 shareholder, you can't approve a loan to yourself</p> <p>9 as the director; is that accurate?</p> <p>10 A. If that's what my counsel advises me,</p> <p>11 that's what will happen.</p> <p>12 MR. FRITZ: Can we take a five-minute</p> <p>13 break?</p> <p>14 MR. SLEDZIK: Sure.</p> <p>15 (Recess taken).</p> <p>16 BY MR. FRITZ:</p> <p>17 Q. Turn back to the shareholder notices,</p> <p>18 the meeting notices. I think it's --</p> <p>19 MR. SLEDZIK: Exhibit 2.</p> <p>20 BY MR. FRITZ:</p> <p>21 Q. Exhibit 2. If you could turn to the</p> <p>22 last page. You produced this document, right?</p> <p>23 A. No.</p> <p>24 Q. Your attorney did?</p> <p>25 A. When you say "produce," did you mean</p>	<p>1 create or deliver?</p> <p>2 MR. SLEDZIK: He's meaning it in a</p> <p>3 legal sense.</p> <p>4 BY MR. FRITZ:</p> <p>5 Q. You delivered it to Plaintiff's</p> <p>6 counsel?</p> <p>7 A. Yes.</p> <p>8 Q. Purportedly to show that Ms. Gillette</p> <p>9 received notice of whatever -- she received</p> <p>10 whatever meeting notice was enclosed, which</p> <p>11 appears to be the shareholder meeting for</p> <p>12 June 24, 2005?</p> <p>13 A. I assume so.</p> <p>14 Q. If you look at the previous page.</p> <p>15 A. Looks like it is.</p> <p>16 Q. Is this the return receipt that you</p> <p>17 received from Ms. Gillette or her agent?</p> <p>18 A. I don't know. I mean, I wasn't</p> <p>19 involved in sending it out, so I really don't</p> <p>20 know.</p> <p>21 Q. Is it fair to say this came from</p> <p>22 Blimpie of California?</p> <p>23 A. Yes.</p> <p>24 Q. And this purports to show that a</p> <p>25 package was signed for by -- do you recognize</p>
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<p>1 that signature?</p> <p>2 A. I think so.</p> <p>3 Q. Whose signature is that?</p> <p>4 A. Ava Sumpter (phonetic).</p> <p>5 Q. Who is that?</p> <p>6 A. Spencer Gillette's sister.</p> <p>7 Q. So this document was produced to show</p> <p>8 that Spencer's sister received a package for her</p> <p>9 at 50 South Valley Verde Drive?</p> <p>10 A. I don't recall, but I don't think that</p> <p>11 is what this says.</p> <p>12 Q. What does it say?</p> <p>13 A. I think it says this was sent to</p> <p>14 Spencer at 10850 Wilshire Boulevard,</p> <p>15 Los Angeles, California.</p> <p>16 Q. Then why would her signature be on the</p> <p>17 same document as the Henderson, Nevada address?</p> <p>18 A. Whose signature?</p> <p>19 Q. Ms. Gillette's sister, Ava's?</p> <p>20 MR. SLEDZIK: Object to the form.</p> <p>21 A. This May 19, 2005 document seems to</p> <p>22 be addressed to Spencer at 10850 Wilshire</p> <p>23 Boulevard, Los Angeles, California.</p> <p>24 Q. Let's stick to the page following</p> <p>25 that.</p>	<p>1 MR. SLEDZIK: What is your question?</p> <p>2 BY MR. FRITZ:</p> <p>3 Q. My question is: Was this page</p> <p>4 produced to us to show that Spencer's sister</p> <p>5 received the package at the Henderson, Nevada</p> <p>6 address?</p> <p>7 MR. SLEDZIK: Object to the form.</p> <p>8 A. I really don't know.</p> <p>9 Q. Would you agree that is what it</p> <p>10 purports to show, that Spencer's sister signed</p> <p>11 for the package in Henderson, Nevada?</p> <p>12 MR. SLEDZIK: Object to the form.</p> <p>13 A. It was received by Ava, and more than</p> <p>14 that, I can't -- received by David. There's two</p> <p>15 different things here.</p> <p>16 Q. I'm referring to the one at the top.</p> <p>17 A. But they're the same. Why would you</p> <p>18 refer to just one?</p> <p>19 Q. That's my question.</p> <p>20 A. My guess is that Ava was in the office</p> <p>21 at 10850 Wilshire Boulevard.</p> <p>22 Q. Was she ever in Henderson, Nevada?</p> <p>23 A. I don't know.</p> <p>24 Q. Would you agree that this document</p> <p>25 purports to show that's where she received it?</p>

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<p>1 A. I honestly don't know because I'd have</p> <p>2 to see the entire package for me to know.</p> <p>3 Q. Do you have the entire package?</p> <p>4 A. I don't know that either.</p> <p>5 Q. If you did, would have it have been</p> <p>6 produced to us?</p> <p>7 A. I would think so, but I don't know.</p> <p>8 Q. Do you know if 50 South Valley Verde</p> <p>9 Drive is Spencer's correct address?</p> <p>10 A. I don't know. I heard her say</p> <p>11 something the other day, which I think was a</p> <p>12 different address.</p> <p>13 Q. 55 South Valley --</p> <p>14 A. I don't know.</p> <p>15 Q. Why don't we look at 6.</p> <p>16 Do you recognize that document?</p> <p>17 (Whereupon, Plaintiff's Exhibit 6,</p> <p>18 letter from Mr. Endervelt to Mr. Fritz, was</p> <p>19 marked for identification as of today's</p> <p>20 date.)</p> <p>21 BY MR. FRITZ:</p> <p>22 Q. Do you recognize what's been marked as</p> <p>23 Exhibit 6?</p> <p>24 A. Yes.</p> <p>25 Q. This is a letter that you sent to me</p>	<p>1 setting forth the stock ownership and the address</p> <p>2 of the shareholders?</p> <p>3 A. Yes.</p> <p>4 Q. And what is Spencer's address</p> <p>5 according to your books and records?</p> <p>6 A. 55 South Valley Verde --</p> <p>7 Q. So not 50 as designated on this --</p> <p>8 A. Correct.</p> <p>9 Q. Looking again at this return receipt,</p> <p>10 do you see where it says "service type number 3"?</p> <p>11 A. Yes.</p> <p>12 Q. Is any service type checked off?</p> <p>13 A. No.</p> <p>14 Q. And the article number, does that</p> <p>15 appear in the delivery section, the article</p> <p>16 number, number 2?</p> <p>17 A. There's an article number on here.</p> <p>18 Q. Do you know when you send documents</p> <p>19 via return receipt, do you know whether the</p> <p>20 article number should appear in the delivery</p> <p>21 section?</p> <p>22 A. I don't.</p> <p>23 Q. Who would know that --</p> <p>24 A. Dora.</p> <p>25 Q. You guys fabricated this document,</p>
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<p>1 right?</p> <p>2 A. You're full of crap, Counsel. Come</p> <p>3 on. Cut it out. Why don't you grow up.</p> <p>4 Q. Explain to me --</p> <p>5 MR. SLEDZIK: Just answer no.</p> <p>6 A. The answer is no.</p> <p>7 BY MR. FRITZ:</p> <p>8 Q. Can you explain to me why Spencer's</p> <p>9 sister's signature is on a document purporting to</p> <p>10 show that she received something at an address</p> <p>11 which Spencer did not reside?</p> <p>12 A. I cannot tell you.</p> <p>13 Q. Who at Blimpie of California would be</p> <p>14 able to explain that?</p> <p>15 A. Probably Ms. Sumpter is the best</p> <p>16 person to ask.</p> <p>17 Q. What about Dora Ricci?</p> <p>18 A. I don't know.</p> <p>19 Q. Who sent this package?</p> <p>20 A. I don't know who actually sent the</p> <p>21 package.</p> <p>22 Q. If it's not you, who could it have</p> <p>23 been at Blimpie California?</p> <p>24 A. There are several young people who</p> <p>25 work in our office part-time. Any one of them</p>	<p>1 could have sent it.</p> <p>2 (Whereupon, Plaintiff's Exhibit 7,</p> <p>3 transactions by account document, was marked</p> <p>4 for identification as of today's date.)</p> <p>5 BY MR. FRITZ:</p> <p>6 Q. Do you recognize what's been marked as</p> <p>7 Exhibit 7?</p> <p>8 MR. SLEDZIK: It looks like you've got</p> <p>9 two sets. You have 2006 and 2007. It's</p> <p>10 obviously intentional.</p> <p>11 MR. FRITZ: Yes. The document is</p> <p>12 what is labeled transactions by account for</p> <p>13 the year 2006 and 2007.</p> <p>14 MR. SLEDZIK: Is there a reason that</p> <p>15 there's two sets of these?</p> <p>16 MR. FRITZ: This is printed in the way</p> <p>17 that you produced it.</p> <p>18 MR. SLEDZIK: Are you telling me that</p> <p>19 I gave you two sets stuck together?</p> <p>20 MR. FRITZ: That may have been. If</p> <p>21 it's a copy error on my part, I apologize.</p> <p>22 MR. SLEDZIK: I'm trying to be clear.</p> <p>23 So the document, as it's marked, is the</p> <p>24 transaction by account for 2007, and the</p> <p>25 transaction by account for the year 2006,</p>

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<p>1 and then a second copy of the same. Okay.</p> <p>2 BY MR. FRITZ:</p> <p>3 Q. We were discussing before that Blimpie</p> <p>4 of California gives \$12,000 to X2Y1 a month,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Is that paid weekly?</p> <p>8 A. I don't know.</p> <p>9 MR. SLEDZIK: Objection to the form.</p> <p>10 BY MR. FRITZ:</p> <p>11 Q. Looking at the first entry here,</p> <p>12 number 4484, X2Y1 management fee \$3,000?</p> <p>13 A. Yes.</p> <p>14 Q. Would you agree that shows a payment</p> <p>15 from Blimpie of California to X2Y1?</p> <p>16 A. Yes.</p> <p>17 Q. And the transaction 4493, X2Y1</p> <p>18 management fee, week of 1/8/07, \$3,000?</p> <p>19 A. Correct.</p> <p>20 Q. And then there's another one, entry</p> <p>21 4500, management fee for \$3,000?</p> <p>22 A. Yes.</p> <p>23 Q. So it's fair to say they're paid</p> <p>24 12,000, \$3,000 a week?</p> <p>25 A. Seems to be.</p>	<p>1 Q. Who owns Maui Tacos?</p> <p>2 A. X2Y1.</p> <p>3 Q. Can you explain why at entry 4511 Maui</p> <p>4 Tacos is given a management fee of \$10,000?</p> <p>5 MR. SLEDZIK: Where are you?</p> <p>6 MR. FRITZ: Entry 4511.</p> <p>7 MR. SLEDZIK: The date?</p> <p>8 MR. FRITZ: 1/26/07.</p> <p>9 A. I have a problem with this. This</p> <p>10 says transaction by account as of December 31,</p> <p>11 2007.</p> <p>12 BY MR. FRITZ:</p> <p>13 Q. That date has not arrived.</p> <p>14 MR. SLEDZIK: I think we can all</p> <p>15 agree. The document -- I'm not sure what</p> <p>16 your reason for raising it.</p> <p>17 THE WITNESS: I'm trying to figure it</p> <p>18 out.</p> <p>19 MR. SLEDZIK: The portion of the</p> <p>20 document, according to the top left --</p> <p>21 THE WITNESS: Was printed out October</p> <p>22 4.</p> <p>23 MR. SLEDZIK: According to the</p> <p>24 document, it was printed October 4. The</p> <p>25 documents speaks for itself. So he's asking</p>
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<p>1 you a question about the transaction 4511 on</p> <p>2 the 26th of January 2007.</p> <p>3 A. No, I don't know.</p> <p>4 BY MR. FRITZ:</p> <p>5 Q. You don't know why Maui Tacos was</p> <p>6 paid a \$10,000 management fee?</p> <p>7 A. No.</p> <p>8 Q. Who at Blimpie of California would</p> <p>9 know that information, if anyone?</p> <p>10 A. The person who did this is no longer</p> <p>11 with us.</p> <p>12 Q. Who is that?</p> <p>13 A. It was a lady by the name of Fran. I</p> <p>14 forgot her last name.</p> <p>15 Q. Do you know where she resides?</p> <p>16 A. In New York.</p> <p>17 Q. Would BOC's books and records show her</p> <p>18 last known address?</p> <p>19 A. I would assume so.</p> <p>20 Q. Such as payroll information?</p> <p>21 A. Yes.</p> <p>22 Q. You're the president and chairman of</p> <p>23 the board, and you don't know why Blimpie of</p> <p>24 California paid Maui Tacos \$10,000?</p> <p>25 A. As the president and chairman and</p>	<p>1 sitting here today, no, I do not know why they</p> <p>2 paid them \$10,000.</p> <p>3 Q. Would there be any books and records</p> <p>4 at the corporation that would explain this?</p> <p>5 A. Yes.</p> <p>6 Q. And you'll look for them?</p> <p>7 A. Absolutely.</p> <p>8 Q. Moving down to the -- it doesn't have</p> <p>9 a number, but just below the entry 4539, it</p> <p>10 says --</p> <p>11 A. Where?</p> <p>12 Q. March 2, 2007?</p> <p>13 A. Yes.</p> <p>14 Q. I'm not sure what is meant by "split,"</p> <p>15 but doesn't it show an amount going from Blimpie</p> <p>16 of California to X2Y1 in the amount of \$16,000?</p> <p>17 A. No.</p> <p>18 Q. Can you explain what that is?</p> <p>19 A. I assume it's one of two things.</p> <p>20 That's probably the advertising split. We get --</p> <p>21 we collect 10 percent.</p> <p>22 Q. From?</p> <p>23 A. From the franchisee. And 4 percent</p> <p>24 goes to advertising. So that could be the</p> <p>25 advertising split. It could have something to do</p>

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<p>1 with Kahala. It has nothing to do with X2Y1 --</p> <p>2 I'm looking at the wrong one. You're looking at</p> <p>3 where it says 16,000 on the split?</p> <p>4 Q. Yes.</p> <p>5 A. I have no idea what that is.</p> <p>6 Q. Who would know the purpose for that</p> <p>7 transaction?</p> <p>8 A. It's in the books and records. We can</p> <p>9 get an answer.</p> <p>10 Q. Moving down to 4542, entry 4542, X2Y1</p> <p>11 loaned \$10,000. Is it fair to say that shows</p> <p>12 that Blimpie of California loaned X2Y1 10,000 on</p> <p>13 or about --</p> <p>14 A. Looks like it.</p> <p>15 Q. Do you know why?</p> <p>16 A. I don't recall at this point.</p> <p>17 Q. You don't know the corporate purpose</p> <p>18 for that?</p> <p>19 A. I don't know what the loan is for. So</p> <p>20 before I could tell you what the corporate</p> <p>21 purpose was, I'd have to know what the loan was</p> <p>22 for.</p> <p>23 Q. Anyone other than you, would they know</p> <p>24 the purpose of that?</p> <p>25 A. I would have to check the books and</p>	<p>1 records and see what is written. I'm sure</p> <p>2 there's an account and it's written on the</p> <p>3 account what it was for.</p> <p>4 Q. Would any other employees of the</p> <p>5 corporation of Blimpie of California know the</p> <p>6 purpose for loaning \$10,000 --</p> <p>7 A. I don't know.</p> <p>8 MR. SLEDZIK: Object to the form.</p> <p>9 BY MR. FRITZ:</p> <p>10 Q. Obviously, I can go through all of</p> <p>11 these on this document, but is it fair to say</p> <p>12 wherever money was loaned from BOC to X2Y1 or</p> <p>13 where a management fee was paid to Maui Tacos,</p> <p>14 sitting here today, you don't know why the</p> <p>15 corporation did that?</p> <p>16 A. That specifically? Right. I can find</p> <p>17 out, but.</p> <p>18 Q. Rather than waste everyone's time and</p> <p>19 go through each entry, you'll investigate why</p> <p>20 these amounts, meaning management fees to Maui</p> <p>21 Tacos or loans to X2Y1 or management fees to</p> <p>22 X2Y1, why those were paid?</p> <p>23 A. Yes.</p> <p>24 MR. FRITZ: I think this is a good</p> <p>25 point to break, since he has no knowledge</p>
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<p>1 of --</p> <p>2 MR. SLEDZIK: When we come back, the</p> <p>3 universe of the deposition is the questions</p> <p>4 with respect to this and whatever we produce</p> <p>5 as documents.</p> <p>6 MR. FRITZ: Or whatever else he said</p> <p>7 he doesn't have knowledge of because he</p> <p>8 needs to review documents. He did that</p> <p>9 several times, so. He said he would have</p> <p>10 known if he was deposed tomorrow, because he</p> <p>11 was going to review documents.</p> <p>12 MR. SLEDZIK: Well, no. He said that</p> <p>13 a couple of times, but, I mean to the extent</p> <p>14 that he said he didn't know because he</p> <p>15 hadn't reviewed the document, it doesn't</p> <p>16 necessarily mean he would have reviewed</p> <p>17 those documents before he came. Like, you</p> <p>18 asked about Spencer's salary. I don't know</p> <p>19 as I sit here today that Jeff would have</p> <p>20 done that tonight. You can put a request</p> <p>21 for production of documents if you think</p> <p>22 that anything came up. Put it in writing.</p> <p>23 I'll try to get it to you within the rules.</p> <p>24 I'll get you the other stuff in accordance</p> <p>25 with the rules, and any obligations and</p>	<p>1 promises I've made to you. When we come</p> <p>2 back, again, I think that the deposition</p> <p>3 should be limited to what we give you and</p> <p>4 where we are with respect to this issue on</p> <p>5 Exhibit 7.</p> <p>6 MR. FRITZ: I think it's fair that we</p> <p>7 won't want to continue the deposition until</p> <p>8 we have the documentation. Whether that has</p> <p>9 to be before or after the mediation, I think</p> <p>10 that is in everyone's interest not to come</p> <p>11 here until the disclosure.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 (Continued on next page to include</p> <p>19 jurat.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 MR. SLEDZIK: Want to do this off the</p>

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1 record?

2 MR. FRITZ: Sure.

3 (Off the record discussion.)

4 (Whereupon, the deposition was

5 adjourned.)

6 (Time noted: 2:59 p.m.)

7

8

9 _____

10 JEFFREY ENDERVELT, ESQ.

11

12

13 Subscribed and sworn to

14 Before me this ____ day Of _____ 2007

15

16 _____

17

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1 C E R T I F I C A T E

2

3 STATE OF NEW YORK)

4 : Ss

5 COUNTY OF DUTCHESS)

6

7 I, Jane Watson, a Reporter and Notary

8 Public within and for the State of New York

9 do hereby certify:

10 That JEFFREY ENDERVELT, the witness whose

11 deposition is hereinbefore set forth, was duly

12 sworn by me and that such deposition is a true

13 record of the testimony given by the witness.

14 I further certify that I am not related to

15 any of the parties to this action by blood or

16 marriage, and that I am in no way interested

17 in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set my

19 hand this 11th day of November, 2007.

20

21 _____

22 JANE D. WATSON

23

24

25

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1 I N D E X

2 INFORMATION REQUESTS

3 REQUESTS: 21, 73, 155

4

5

6 E X H I B I T S

7 PLAINTIFF'S FOR ID.

8 Exhibit 1 Financial statements 68

9 Exhibit 2 Shareholders' meeting notice 100

10 Exhibit 3 Bylaws 104

11 Exhibit 4 Minutes of meeting 126

12 Exhibit 5 Affidavit of witness 134

13 Exhibit 6 Letter from Mr. Endervelt to

14 Mr. Fritz 145

15 Exhibit 7 Transactions by account document 148

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1 E R R A T A

2 I wish to make the following changes, for

3 the following reasons:

4

5	PAGE	LINE	
6	_____	_____	CHANGES: _____
7	_____	_____	REASON: _____
8	_____	_____	CHANGES: _____
9	_____	_____	REASON: _____
10	_____	_____	CHANGES: _____
11	_____	_____	REASON: _____
12	_____	_____	CHANGES: _____
13	_____	_____	REASON: _____
14	_____	_____	CHANGES: _____
15	_____	_____	REASON: _____
16	_____	_____	CHANGES: _____
17	_____	_____	REASON: _____
18	_____	_____	CHANGES: _____
19	_____	_____	REASON: _____
20	_____	_____	
21	_____	_____	
22	WITNESS'	SIGNATURE	DATE
23			
24			
25			

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